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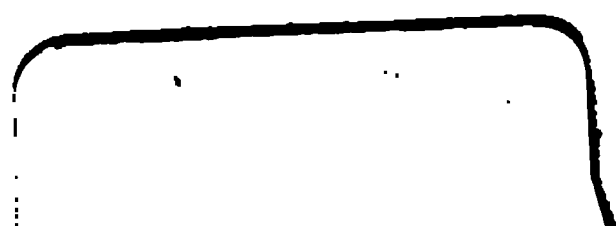


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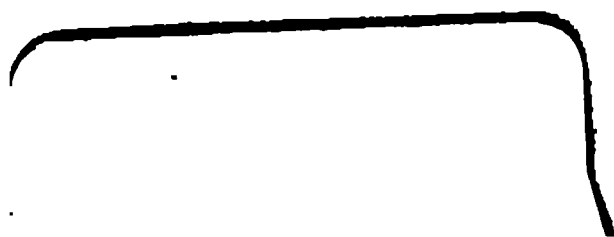


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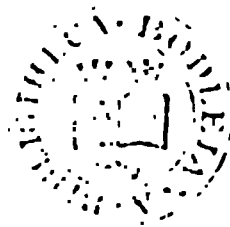


ELECTION PETITIONS.

REPORTS
OF THE
DECISIONS OF THE JUDGES
FOR THE TRIAL OF
ELECTION PETITIONS
IN ENGLAND AND IRELAND,
PURSUANT TO
THE PARLIAMENTARY ELECTIONS ACT, 1868.

BY
EDWARD LOUGHLIN O'MALLEY, Esq.,
AND
HENRY HARDCASTLE, Esq.,
BARRISTERS AT-LAW.

VOL. I.



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ERRATA.

Page 9, last line, *for* "17 & 18 Vict. c. 102, ss. 43 and 45," *read* "Parliamentary Elections Act, 1868, ss. 43 and 45."

Page 66, marginal note, *for* "s. 13," *read* "s. 2 (1)."

Page 67, line 14 from top, *for* "17 & 18 Vict. c. 102, s. 1," *read* "17 & 18 Vict. c. 102, s. 2 (1)."

Page 118, line 15 from top, *for* "Parliamentary Elections Act, 1865," *read* "Parliamentary Elections Act, 1868."

Page 109, marginal note, *for* "21 & 22 Vict. c. 89," *read* "21 & 22 Vict. c. 87."

Page 129, in note *, *for* "section 2," *read* "section 11."

Page 172, line 13 from bottom, *for* "Wolferstan & Dew," *read* "1 P. R. & D. 161."

Page 160, line 1 from bottom, *for* "5 & 6 Will. 4," *read* "4 & 5 Will. 4."

CASE I.

BOROUGH OF WINDSOR.

BEFORE MR. JUSTICE WILLES, JANUARY 12, 1869.

Petitioner : Colonel Richardson-Gardner.

Respondent : Mr. Roger Eykyn.

Counsel for Petitioner : Mr. O'Malley, Q.C., and Mr. Murphy.

Agent : Mr. Long, Windsor.

Counsel for Respondent : Mr. Henry James, and Mr. C. Coleridge.

Agents : Mr. Darvill and Mr. Wyatt.

The petition contained the usual allegations of bribery, &c., and prayed the seat upon a scrutiny.

Mr. *O'Malley* opened the Petitioner's case. He pointed out the view of the law with respect to agency which he understood to prevail. He called attention to 17 & 18 Vict. c. 102, s. 2 (1), which provides that "every person who shall directly or indirectly, by himself or by any other person in his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter to induce any voter to vote or refrain from voting," should be liable to a certain punishment; and to 17 & 18 Vict. c. 102, s. 36, which says, "If any candidate at an election for any county, city, or borough, shall be declared by an Election Com-

Bribery by
agent, 17 & 18
Vict. c. 102, s.
2 (1), 36.

mittee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence." The construction which had been put upon those words by Election Committees was, that if either the candidate or his agents had been, directly or indirectly, guilty of bribery, the election was void ; and there was not a single instance in which an election had been held to be valid where bribery had been proved to have been committed by the agents of a candidate. He was about to quote cases in support of this view, when

Mr. Justice WILLES said :—Counsel need not refer to cases in support of his view, because the section of the Act of Parliament was quite distinct upon the point.

Mr. *O'Malley* then called attention to cases of bribery which it was proposed to prove on the part of the Petitioner.

Evidence was then given for the Petitioner.

The following points were raised in the course of the Petitioner's case :—

Bribery.
Colourable
charity.
(1) 3.

It was proved that the Respondent had given one pound for a voter who had previously promised him his vote, and had afterwards applied to him for assistance in distress occasioned by the death of two children.

Mr. Justice WILLES said the giving of the sovereign was a question of degree. If a sovereign were sent to every person on the register on the occasion of a birth or a death in his family by a candidate at an election, it would be hard to come to any other conclusion than that the money was given with the view of obtaining votes. It was a very different question, whether an isolated gift of the kind in a case of great distress was to be looked upon in the same light.

Card mes-
senger no
authority to
canvass.

Evidence was given of an attempt by William Bishop to bribe one Hall, a voter, by offering him a five-pound note. It was proved that Bishop had come to Windsor on the nomination day in consequence of a letter he had received from Nicholls, one of the

Respondent's agents; that he met Nicholls on the night before the polling, and he told him he was to act next day as a card messenger from the Clewer booth to the committee rooms. Nicholls asked him if he knew Hall, and expressed a wish that he should ascertain from him for whom he was going to vote. He did not enter the committee room where he took the cards from the polling booth, but gave them in the ante-room. He had received no instructions from Nicholls to give or offer money to any voter.

Mr. *Henry James*, for the Respondent, was about to comment on Hall's case, when

Mr. Justice WILLES said :—" I do not think that Bishop, who was merely a card messenger, can be said to have been an agent;" I have stated that authority to canvass—and I purposely used the word 'authority' and not 'employment,' because I meant the observation to apply to persons authorised to canvass, whether paid or not for their services—would, in my opinion, constitute an agent, and that authority for the general management of an election would involve authority to canvass. I do not say that there may not be instances of agency on behalf of a candidate besides those of authority to canvass and authority for the general management of an election. As an illustration of a sort of case with which I might have to deal, I may mention that of an agent for election expenses. I do not think a mere messenger, such as Bishop was, can be regarded as an agent."

It was proved that the Odd Fellows' Society consisted for the most part of artizans. The annual dinner was held at the Crown Tavern on the 25th of August, the Respondent being in the chair, and 95 members present. The usual course on such occasions was that those present should each pay his own score. The chairman, however, occasionally paid for the wine which was supplied. On this occasion four or five dozen of champagne were drunk. The wine was placed on table by the landlord at the Respondent's request. Each guest had paid half-a-crown for his dinner. Twenty-seven pounds ten shillings were set down to the account of the Respondent, Mr. Jones, the vice-chairman, and Mr. Mason, for champagne, sherry, and cigars. A considerable number of persons present at the dinner were voters for Windsor, of all shades of political opinion.

Treating. Odd
Fellows' So-
ciety benevo-
lent not
political.

Mr. Justice WILLES subsequently in his judgment said :—The Odd Fellows is not a political society. Its constitution is of a benevolent character, and party politics are as a rule excluded from it, as from other societies of a similar description. The sting of this case lies in the fact that the dinner was held on the 28th of August, within a fortnight or three weeks of the commencement of the actual canvass for the elections. Now I am impressed with the objectionable character, to say the least of it, of any transaction by which an intending candidate may seek to ingratiate himself with electors, whether of his own side in politics or not, by profuse expenditure for luxuries. I must express the opinion, for I entertain it, that this is a questionable proceeding, and that it would be well if such proceedings were refrained from in future. I am at the same time quite aware of the distinction between treating and bribing. The terms of the section of the Acts of Parliament applicable to treating are very different from those applicable to bribing. I must bear that steadily in mind in dealing with cases of this description. There is, as we know, an express enactment with respect to treating which forbids the giving of any refreshment to voters during an election under a penalty, which seems to imply that all hospitality is not struck at by the enactments as to treating. If every man at the Odd Fellows' dinner got six shillings and eightpence, or the price of the champagne which he drank, what would a Parliamentary Committee say to such a proceeding, and what must I say of it if there were not a distinction between bribing and treating? This case, however, is not, I think, altogether without precedent. Cases of a similar nature have, I find, been under the consideration of Parliamentary Committees, who have drawn a distinction between societies which have, and those which have not, a political object. I may refer to the decision in the Pontefract case, *Woolferston and Dew*, page 71, as bearing upon this point. The treating of Odd Fellows mentioned in that case was to a much smaller extent than in the present instance, but it was held not to amount to treating within this Act, the society not being a political society. I may also refer to the Maidstone case, *Woolferston and Dew*, page 104, as bearing immediately upon this point, as showing that it appears to have been taken for granted, and no doubt cor-

rectly, that a similar treating of a society having a political character, if established in evidence, would have amounted to an offence within the Act of Parliament. I am not bound by the decisions of Parliamentary Committees; but I may properly refer to those decisions for my guidance. As to the case of the Odd Fellows, then, while I cannot, for the reasons I have mentioned, disabuse my mind of its importance, yet I think it well to follow the course which has been adopted by Parliamentary Committees in similar instances.

John Smith having proved that he had got a Mr. Wicks to write to the Respondent, and the letter being called for by the petitioner's counsel,

Refusal to
produce
document.
(1) 29.

Mr. Justice WILLES :—The Respondent must say whether he will produce it or not; because unless he produces it now, he cannot produce it afterwards for the purpose of explanation.

Mr. Wicks was not called by the Petitioner as to this letter (although the Respondent asked that he might be). And upon Smith being cross-examined as to Wicks,

31 & 32 Vict.
c. 125, s. 32.
(1) 63.

Mr. Justice WILLES said that if neither side called Wicks he should consider it his duty to order Wicks to come and be examined by the Court, as he thought that this was a case where the section of the Act authorising the Judge to examine a witness would apply.

Upon a witness being called to prove agency by something that the alleged agent said to him after the election, it was objected on the part of the Respondent that although it might be evidence on a scrutiny, it was not evidence against the Respondent on the question of the election being void.

Question of
seat and
scrutiny to a
certain extent
one, so that
evidence
admissible if
applicable to
either issue.
(3) 141.

Mr. Justice WILLES said that to a certain extent the question of the seat and the question as to scrutiny were to be considered as one and the same, and that on that ground he should not reject the evidence, because it might, in the event of a scrutiny, become material; but that the distinction was quite clear to him between striking off a vote because the voter was proved by his own statement to be guilty of corrupt practices, and fixing a person for whom the alleged agent was said to be acting.

151.

Upon a witness saying that a voter had made statements to him with reference to his vote,

(2) 35.

Mr. Justice WILLES said that the witness might clearly be asked what those statements were, because they might be evidence on the issue as to whether that voter's vote should be struck off on the scrutiny; which was quite a different question from that as to whether bribery was made out against the Respondent.

Election petition inquiry quasi-criminal.
(2) 369.

Upon an unstamped promissory note being put in as evidence, Mr. Justice WILLES said that the present inquiry must be taken to be quasi-criminal, and, therefore, that the Act which makes stamps unnecessary in criminal proceedings would apply.

Use of influence not necessarily corrupt.
(3) 172.

Upon it being proved that a Mr. Mason's tenants, who were in arrear of rent, had all voted the way Mr. Mason wished them, on the understanding (as it was submitted) that they should not be pressed for their rent,

Mr. Justice WILLES said that the question of whether a man gave a free vote was something like the question whether a man made a free will, and that the mere fact of a person having influence and intentionally retaining it, is not alone evidence of unduly exercising that influence.

Mr. *H. James* opened the Respondent's case, and was about to call witnesses, when

Mr. *O'Malley* stated that Colonel Gardner had come to the conclusion that the case which had been made out against the Respondent was not at all the sort of case which he had anticipated that he should have been able to prove, and that he felt that he should not be justified in pressing his case any further.

Mr. *H. James*, having considered the Respondent's position, said that he proposed to call the Respondent, Mr. James Herbert, and Mr. Bedborough.

Mr. Justice WILLES inquired whether it was proposed to proceed with the recriminatory charge against Colonel Gardner, and

Mr. *James* having expressed a doubt as to the course which he should pursue on this point,

Inquiry judicial not inquisitorial.

Mr. Justice WILLES said:—I do not consider it my duty to attempt that which would properly devolve upon a Commission of Inquiry, if such a Commission should issue in compliance with a petition which has, I understand, been presented to the House of

Commons. I consider my duties to be judicial, and not inquisitorial, except in so far as it would be proper that I should follow up any clue which the evidence laid before me by the parties on the one side or the other may furnish. I do not think it was the intention of the Act of Parliament to convert a judge into a magistrate to institute a preliminary inquiry. I am the more satisfied of that because of the express provision with reference to the issuing of commissions of an entirely different character from that under which I now sit, in the event of its becoming necessary to inquire into the existence of corrupt practices generally. It is only where a clue to the existence of such corrupt practices is presented by the evidence properly and formally laid before me that I shall think it necessary, as at present advised, to send for parties and papers with a view to investigate a subject which I consider to be out of my jurisdiction.

The Respondent, Mr. *Herbert*, and Mr. *Bedborough* having been examined, and having contradicted evidence which had been adduced in support of the Petitioner's case, the recriminatory charge against Colonel Gardner was abandoned.

Mr. Justice WILLES then delivered judgment, declaring that the Respondent was duly elected.

Mr. Justice WILLES said :—With reference to the question of *Costs*. costs, I am convinced that the intention of the Legislature was to put this question on the same footing as in ordinary actions, and that, as a general rule, the costs ought to be paid by the unsuccessful party. I am of opinion that although the petition is neither frivolous nor vexatious, yet as it has failed, and as there are no special circumstances to displace the general rule, I must order the Petitioner to pay the costs of the Respondent.

CASE II.

BOROUGH OF NORWICH.

BEFORE MR. BARON MARTIN, JANUARY 15, 1869.

Petitioner: Jacob Henry Tillett.

Respondent: Sir Henry Josias Stracey, Bart.

Counsel for Petitioner: Serjeant Ballantine ; Mr. D. D. Keane, Q.C. ;
Mr. Sims Reeve.

Agents: Messrs. Ashurst and Morris ; Mr. Abel Tillett.

Counsel for Respondent: Mr. Rodwell, Q.C. ; Serjeant Sleight ; Mr. E. L.
O'Malley ; Mr. Cooper Wyld.

Agents: Mr. Thomas Knox Holmes ; Mr. Skipper ; Mr. Collins.

The petition contained the usual allegations of bribery, &c., and claimed the seat upon a scrutiny.

Serjeant *Ballantine* opened the Petitioner's case.

Evidence was then given for the Petitioner, in the course of which it was proved that a large number of voters were bribed by one Hardiment, whose agency was clearly proved.

The following decisions were given upon points raised in the course of the Petitioner's case :—

Subpoena.
Order to
attend.
6.

Upon proof by a witness, John Abbott, that Thomas Worledge was keeping out of the way to avoid being served with a subpoena, Serjeant Ballantine applied to the Court for an order for the attendance of his wife, Mrs. Worledge, who had not been subpoenaed.

Mr. Baron MARTIN said that he did not think he had any power to grant such an order, before they had been served with a subpoena, and that they might have a subpoena issued from the Court.

Upon another witness, Mrs. Hardiment (who had been subpoenaed as a witness) being called and not answering,

Mr. Baron MARTIN said:—"I will make an order for her to come; if witnesses will not come, I will immediately make an order for them to come."

It having been proved that one Hardiment had bribed voters to vote for the Respondent, and evidence having been given by which his agency was proved (as Mr. Baron Martin said) up to the hilt,

Wording of
petition.
Allegation as
to agency.
37.

Mr. *Rodwell* called the attention of the Court to the wording of the petition. He said that throughout the allegations, as well as throughout the prayer, not one single word was said about bribery by agency. In the third allegation the petition merely said that Respondent, "by himself and other persons on his behalf," did so and so. He maintained that there was a distinction between a person who committed the act on the part of the principal as an agent, and a person who did so merely in his behalf. He said that the Judges had laid down that, before a person could be made responsible for the acts of another person who had been acting in his behalf, it must be shown that the act had been done with the privity, knowledge, and consent of the party for whom it was done; in other words, it must have been done at the special request or instance of the principal. He must have been the person who had furnished the money, and who had given special orders for the act to be done, before he could be made liable for the act of the other person. He referred to several cases;¹ and contended that there was a recognised distinction between the acts of "an agent" and the acts of "a person who did a thing on behalf of another."

Mr. Baron MARTIN said he would not study the wording of the petition, but its substance.

Mr. *Rodwell* then cited 17 & 18 Vict. c. 102, ss. 43 & 45, to show

¹ *Hughes v. Marshall*, 2 C. & J. 118; *Felton v. Easthope*, "Rogers on Elections," p. 328.

that the Legislature drew a very clear distinction between acts done "with the knowledge and consent of" a candidate, and acts done by an agent; he said that the petition should be taken as an indictment against the Respondent, and that looking upon it as such, it contained no count by which the Respondent could be put upon his trial for acts done by his agents.

Mr. Baron MARTIN said:—I am very clearly of opinion that, under the third clause of this petition, it is competent for the Petitioner to go into any act of bribery by the Respondent himself, and further, to go into acts of bribery by any person for whom, in law, the Respondent is responsible, whether he be an agent directly appointed by the Respondent, or whether he be a person who, by reason of the construction that has been put on these Acts of Parliament—a construction which to some extent is binding—was acting on his behalf. The allegation in the third clause, "other persons in his behalf," means every person for whose act or conduct he is responsible. Under the Act of Parliament it is expressed "every person who shall directly himself, or by any other person in his behalf," and it is perfectly clear that the meaning which is given to "any other person in his behalf" is every person other than the candidate for whose act he is responsible. You have cited two cases with which I was familiar, and I apprehend those cases were well decided. If I were sitting here trying an indictment or trying an action for penalty, before the candidate could be made responsible for another, for a crime or penalty, you would have to give evidence of direct bribery: but I am not trying a criminal case, I am trying a civil case, and the rules applicable to a civil case are the rules applicable, I apprehend, to this. The law of agency which would vitiate an election is utterly different from that which would subject a candidate to a penalty, or an indictment, and the question of his right to sit in Parliament has to be settled upon an entirely different principle. Mr. Justice Blackburn, Mr. Justice Willes, and myself unanimously came to the conclusion that any person authorised to canvass was an agent, and it does not signify whether he has been forbidden to bribe or not. If the candidate had told him honestly, "Do not bribe; I will not be responsible for it;" if bribery was committed, that bribery would affect him. Such is

the opinion of Mr. Justice Willes, Mr. Justice Blackburn, and myself. The relation is more on the principle of master and servant than of principal and agent. It has been arrived at after full consideration, and it is a conclusion by which I am prepared to abide. A master is responsible for an act of negligence on the part of his servant, notwithstanding what directions he may have given him; for instance, if he is driving a carriage, and carelessly driving against another, does an injury; and if the Respondent had told Mr. Hardiment, who is now proved up to the hilt to be an agent, not to commit any illegal act, if he did so the Respondent is responsible for it. It is utterly immaterial whether the Respondent had forbidden him to bribe if he committed bribery, the effect of which would be to destroy his *status* as a candidate, render him by law incapable of election, and make every vote given to him void.

Mr. *Rodwell*, Q.C., opened the Respondent's case:—

Witnesses were then called for the Respondent. Evidence was given to rebut that by which Hardiment's agency had been proved, and the Respondent was called to deny any knowledge or participation in the bribery.

Witnesses were also called to prove the recriminatory charge against the Petitioner, but they failed to establish a case, and thereupon

Serjeant *Ballantine* said on behalf of the Petitioner that it was not his intention to press his claim to the seat on a scrutiny.

Mr. Baron MARTIN then delivered judgment, declaring that the Respondent was unseated on the ground of bribery by agents, but absolving him from any personal knowledge of it.

Mr. *Keane*, Q.C., applied to the Court to decide the question of Costs.

Baron MARTIN said,—Costs will follow the events.

Mr. *Rodwell*, Q.C.:—There is one very serious part of this matter in which the Petitioner has failed and we have succeeded, and I submit that we ought to have costs with regard to this.

Baron MARTIN :—The costs to which the Petitioner is entitled are those which have been incurred by him in respect of showing his own freedom from bribery of every kind, and showing that there was bribery for which the Respondent was responsible.

Mr. *Rodwell* then objected to the Respondent paying the whole costs, on the ground that there were two issues, one upon the 43rd section of the Act of 1868, charging the Respondent with personal bribery, and one upon the 46th section, for bribery by agents, and that the Petitioner having failed upon the first of these issues, the Respondent was entitled to these costs.

Mr. Baron MARTIN said that he was of opinion that there was only one issue, but that before deciding the question of costs he would consult the other Judges.

Note.—Eventually the question of costs was decided as follows :—

That the costs incidental to the petition so far as they relate to the determination and proof that the Respondent was not duly elected, and so far as they relate to the recrimination against the Petitioner under 31 & 32 Vict. c. 125, s. 53, be paid by the Respondent to the Petitioner, and the costs of the Respondent in meeting the claim that the Petitioner was duly elected and ought to have been returned be paid by the Petitioner to the Respondent.

CASE III.

BOROUGH OF GUILDFORD.

BEFORE MR. JUSTICE WILLES, JANUARY 19, 1869.

Petitioners: Elkins and others.

Respondent: Mr. Guildford Onslow.

Counsel for Petitioners: Mr. Overend, Q.C., Mr. J. C. Mathew.

Agent: Mr. H. E. Brown.

Counsel for Respondent: Serjeant Sargood, Hon. E. Ashley.

Agent: Mr. W. H. Wyatt.

The petition contained the usual allegations of bribery, &c., but did not pray the seat.

Evidence was given to prove corrupt treating and undue influence, but failed. In support of the charge of bribery it was proved that two non-resident voters had their travelling expenses sent to them as an inducement to come up and vote, but the agency of the sender was not established.

In the course of the case :—

A witness, Cawson, proved that he had received a letter from one Handford, promising to pay his (Cawson's) travelling expenses. He had subsequently returned the letter to Handford, at his request.

Mr. Justice WILLES said before the letter was called for, Handford must be put into the box.

Handford having proved that he had lost or destroyed that letter, Mr. *Overend*, for the Petitioners, proposed to give secondary evidence of its contents.

Agency need not be established before evidence of corrupt practices is gone into.

(2) 163.

Serjeant *Sargood*, for the Respondent, objected to this, on the ground that it had not been proved that Handford was the Respondent's agent, or that he had anything to do with him.

(2) 175.

Mr. Justice Willes :—The objection is, in effect, that no proof of Handford's agency has yet been given, but the act¹ removes that objection, for it says that proof of corrupt practices may be given before proof of agency, unless the judge in his discretion should change the order, or, rather, should direct counsel to change the order of proceeding. But how can I properly exercise that discretion against the Petitioners' case at present? It would be a prejudgment. If agency were not proved this would fall to the ground; there is no question of scrutiny under the present petition, but if agency be proved there will arise a question somewhat analogous to that in the *Slade*² case, whether the *corpus delicti* is made out, and if so whether it is at the expense of the agent, in which case the election would be void; or whether it is also made out against the Respondent, in which case the penal consequences which are introduced by the new act would inevitably follow.

(2) 177.

I do not at present see that I have any discretion in the matter, because the Petitioners have opened a case of agency; if they succeed in proving it, this will then become important.

Mr. Justice WILLES in his judgment declared the Respondent duly elected.

Voter disqualified from non-residence, 6 & 7 Vict. c. 18, s. 79, may be bribed.

Referring to a case in which the Petitioners had proved an attempt to bribe two men whose names were on the register, but who had become disqualified from voting by reason of non-residence, he said, with reference to their disqualification, "These men were in the employment of the Ordnance Survey, and were on the register prior to the election. Being so, they had the power to vote, but before the election occurred they ceased to reside at Guildford, not temporarily but permanently, and had no residence but that in Chester at the time of the election. They had, therefore, no right to vote. It is clearly so laid down in the Act³;" and with reference to the bribery of disqualified voters,

¹ 31 & 32 Vict., c. 125, s. 17.

² *Cooper v. Slade*, 6 E. & B. 25 L. J. Q. B. 324.

³ 6 & 7 Vict., c. 18, s. 79.

"It struck me at first that the law respecting bribery applied only to persons entitled to vote, but that is not so; the law applies also to a person who may be *prima facie* entitled to vote; it is said expressly in 17 & 18 Vict., c. 102, s. 38, that the word voter shall mean any person who has or claims to have a right to vote in the election of a member."

Speaking as to what might be the effect of general bribery, he said:—

"It is unnecessary to go into any inquiry here as to general bribery. We have no evidence whatever of the prevalence of general bribery at the election. But do not be mistaken and suppose that because these inquiries turn upon individual cases, and upon whether these cases are traced to the member or his agents, that general corruption quite apart from acts of the members or their agents would not have the effect of vitiating an election. It clearly would, because it would show that there was no pure or free choice in the matter, that what occurred was a sham, and not a reality. This, however, is out of question here. There may also be bribery so large in amount as in itself to furnish evidence, not indeed of general bribery, but of bribery coming from a fund with which it is impossible, as a matter of common sense not to conclude that the member or at least an agent of his was acquainted. In that case the proper result would be the vitiation of the election, because the bribery was of such an extent as must have come to the knowledge of the member or his agent."

As to costs he said:—"Inasmuch as the petition was founded upon strong *prima facie* grounds, and attended with reasonable and probable cause for pursuing the inquiry to a termination, I cannot visit the Petitioners with costs; each party must bear and pay their own costs."

CASE IV.

BOROUGH OF BEWDLEY.

BEFORE MR. JUSTICE BLACKBURN, JANUARY 19, 1869.

Petitioners: Mr. Charles Sturge, and Mr. George Baldwin.

Respondent: Sir Richard Glass.

Counsel for the Petitioners: Mr. Fitzjames Stephen, Q.C., Hon. E. Chandos Leigh, Mr. Lewis Sturge.

Agents: Messrs. Chilton, Burton, Yeates, and Hart, and Mr. William Morgan.

Counsel for the Respondent: Mr. Hardinge Giffard, Q.C., Mr. Poland.

Agents: Messrs. Lawrence, Plews, and Boyer.

The petition contained the usual allegations of bribery, &c., and prayed the seat on behalf of the other candidate, Mr. Thomas Lloyd.

It was proved that a large number of public-houses were habitually open during the election; that whoever went in there got drink as he wished, and that all this drink was ordered and controlled by a clerk of the Respondent's agent.

Evidence was also given as to the employment of watchers, but it was not shown that they were so employed for the purpose of influencing their votes.

In the course of the case :—

Upon one Fort being called as a witness for the Petitioners, and being asked questions, with a view of showing that he had been bribed, it was objected that his name was not included in the particulars.

Mr. Justice BLACKBURN observed that, as particulars had been

Examination
of witness not
down in the
particulars to
be postponed.

furnished, to commence with a case in which no notice had been given, might take the other side by surprise, and that it would be fair and right that the case should stand over till later in the inquiry.

Thomas Wood, who had previously made a statement to the Petitioner's agent, which statement was at the time taken down in writing, said, in answer to a question put to him about the matter by the Petitioner's counsel, that he did not remember the substance of the statement.

Previous statement of witness not evidence in chief.
7.

Mr. Justice BLACKBURN said that he would allow a leading question to be put upon the subject, but that the rule was that a previous statement of a witness differing from what he stated on his oath in Court, might be proved to shake his evidence, but could not be used as evidence in chief.

John Goodwin, having stated that the Respondent, himself, and several other persons were together in a public-house, and that in the presence of the Respondent one of those persons asked the witness if he would have anything to drink, it was objected that this was no evidence that this treating was by the authority of the Respondent ; but

Evidence of treating.
29.

Mr. Justice BLACKBURN ruled that anything done in the Respondent's presence which would tend to show that he was aware that liquor was given gratis was relevant (the weight to be attached to it being greater or less, according to circumstances), as tending to show that in the words of the Act he was accessory to treating.

Mr. Justice BLACKBURN in his judgment declared the election void on the ground of corrupt treating.

As to the question of agency, he said :—" No one can lay down a precise rule as to what would constitute evidence of being an agent. Every instance in which it is shown that, either with the knowledge of the member or candidate himself, or to the knowledge of his agents who had employment from him, a person acts at all in furthering the election for him, in trying to get votes for him, is evidence tending to show that the person so acting was authorised to act as his agent. It is by no means essential that it should be shown that a person so employed, in

What constitutes evidence of agency.
Effect of large powers of agency.

order to be an agent for that purpose, is paid in the slightest degree, or is in the nature of being a paid person. But it is a question what is sufficient evidence upon that point. I should apprehend that when there is evidence given, as in this case, that when the candidate is going about canvassing, a gentleman goes previously and requests voters, in some such way as this—‘Will you meet Sir Richard Glass in such and such a place?’ and then when he comes to that place says, ‘Here is Sir Richard Glass, come to ask for your vote;’ or says to the person what would certainly be implied or understood, ‘Here is Sir Richard, for whom I wish you to vote,’—all that is evidence to show that the person was an agent. And I take it that the question for the Court sitting to try the case comes ultimately to be, whether upon the aggregate of all these things taken together, of which each in itself is little, but is certainly some evidence, the person is shown to have been employed to such an extent as to make him an agent, for whom the candidate would be responsible. I take that in each case the Judge must bring common sense to bear upon it, and satisfy himself whether it is sufficient or not. I do not think that such a question as that would turn upon minute particulars as to what particular words were used, or what particular thing was done, but upon the common-sense broad view of it.”

He then said that in the present case he felt no difficulty, because it was proved that the Respondent deposited as much as 11,000*l.* in the hands of one Pardoe, directing him in his letter to apply that money honestly, but not exercising either personally or by any one else, any control over the manner in which that money was spent, and not, in fact, knowing how it was spent. “Upon that,” he said, “I can come to no other conclusion than that the Respondent made Pardoe his agent for the election to almost the fullest extent to which agency can be given. A person proved to be an agent to this extent is not only himself an agent of the candidate, but also makes those agents whom he employs. The extent to which a person is an agent differs according to what he is shown to have done. An agent employed so extensively as is shown here, makes the candidate responsible, not only for his own acts, but also for the acts of those whom he, the agent, did

employ, even though they are persons whom the candidate might not know or be brought in personal contact with. The analogy which I put in the course of the case is a strong one, I mean that of the liability of the Sheriff for the under-Sheriff, when he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under-Sheriff employs, and not only responsible for the acts done by virtue of the mandate, but also for the acts done under colour of the mandate, matters which have been carried very far indeed in relation to the Sheriff."

Applying the principle thus laid down to the case of one Burmish, a clerk to Pardoe, he said :—

"Every person employed in the election by Pardoe is an agent of the Respondent. Burmish was so employed, and if he had ordered drink and treating without authority from any body, and had paid for it out of his own pocket, that of itself would have been sufficient to avoid the election."

Upon the general question of treating, he said, after citing 17 & 18 Vict. c. 102, s. 4 :—"Looking at those words, it is plain that those who prepared the Act have endeavoured to take in almost everything that could possibly be taken in, but they have very properly and wisely governed it all by the word 'corruptly.' As to this word 'corruptly,' the true construction of the Act is that which was stated by Mr. Justice Willes in giving his opinion in the House of Lords in the case *Cooper v. Slade*, namely, that 'corruptly' there does not mean wickedly, or immorally, or dishonestly, or anything of that sort, but with the object and intention of doing that which the Legislature plainly means to forbid. In fact, giving meat or drink is treating, when the person who gives it has an intention of treating—not otherwise; and in all cases where there is any evidence to show that meat or drink has been given, it is a question of fact for the Judge whether the intention is made out by the evidence, which in every individual case must stand upon its own grounds; and although each individual case may be a mere feather's weight by itself, and so small that one would not act upon it, yet if there is a large number of such cases, a large number of slight cases will together make a strong one; and consequently it must always be a very important inquiry what was the scale, the amount and the extent to which it was done.

Proof of corrupt treating.
Intention.

In considering what is corrupt treating and what is not, we must look broadly to the common sense of the thing. There is an old legal maxim, '*Inter apices juris summa injuria.*' To go by the strict letter of the law often would produce very grave wrong. If we were to say that an election was void upon a single case of that sort, we should be going to the '*apices juris*,' and the result would be '*summa injuria.*' Therefore the inquiry must be as to the extent and amount of such cases."

Speaking with reference to the return of the election expenses, he said :—

Insufficient return by agent of expenses is evidence of knowledge on his part of corrupt practices.

"When you look at the mode in which these election expenses were returned by the Respondent's agent, carefully avoiding returning any considerable items that had been actually paid before, sums which you cannot possibly suppose were omitted by accident, such as 120*l.* or 90*l.*, and also the not complying with the provisions of 26 Vict. c. 29, s. 4, by returning what were the expenses incurred, whether paid or not, it is impossible to avoid coming to the conclusion that all this was done simply to baffle the Act of Parliament, to render it a nullity, and to prevent it being known how the money was spent. All that is evidence that the Respondent's agent knew perfectly well that the money was bestowed for purposes that would not bear the light of day. I must, therefore, find the Respondent's agent personally guilty of corrupt treating."

Employment of watchers a corrupt practice.

As to the employment of watchers, he said :—"It comes within all the mischief of treating. In the first place, it indirectly influences the men, whether voters or not; if they are not voters it indirectly influences all their friends and other voters. In the second place, when it is given to voters, it would in all human probability lead to an expenditure by them in public-houses and elsewhere, which would indirectly influence voters. In that way it falls within all the mischief of treating, but no statute has yet been passed rendering it of the same effect as treating." He subsequently said that he considered this to be a corrupt practice, and that as such he must report it to the Speaker.*

* His report as to this was as follows :—"That it was proved that a practice extensively prevailed on both sides of employing and paying a large number of persons as what was called '*watchers*,' who rendered no service of any value in return. That this practice appears to have been kept up at Bewdley because it

In dealing with the evidence affecting the personal guilt of the Respondent, he said :—

“In paying money to a person not declared to be his election agent, the Respondent was in the most direct terms acting contrary to 26 Vict. c. 29, s. 4. Besides I cannot in the slightest degree doubt that if a fund is placed in the hands of an agent by a candidate, and if it is shown that the agent expended it in corrupt practices afterwards, it is evidence tending to show that the candidate paying into those hands the money that was spent in corrupt practices was himself intending that it should be spent in corrupt practices. Then it seems to be a question to what extent it was shown, if the money was bestowed for corrupt practices, that the candidate who gave the money was aware of it, and in that case, also, the extent to which it was shown that there were corrupt practices, would be very material. I think if it were shown that there had been here, as in many other boroughs in former times, and it may be now, extensive bribery, a large number of people bribed, corrupt clubs paid money, and so forth, it would be a very serious question whether the candidate, in putting money into the hands of his agents, was not personally cognisant of it. But it does not come to any such question here.”

What is evidence of respondent being personally guilty of corrupt practices.

As to costs, he said that “as the Petitioners had succeeded in showing that the election had been avoided by the acts of persons for whom the Respondent was responsible, the *prima facie* general rule that the successful party has his costs must prevail. If it appeared that there was anything particularly annoying or vexatious, I would deduct that from the costs.”

Mr. *Giffard*, for the Respondent, submitted that the costs of preparation for the scrutiny ought not to fall upon the Respondent.

Mr. Justice BLACKBURN, said that inasmuch as it might be fairly presumed that if the Petitioners had proceeded with the scrutiny they would not have been successful, his decision was that the Petitioners' costs should be borne by the Respondent, except those incurred solely and exclusively for the scrutiny.

was formerly the practice at old elections, and is very objectionable for the same reasons as those which have induced the Legislature to prohibit treating.”

CASE V.
BOROUGH OF LICHFIELD.

BEFORE MR. JUSTICE WILLES, JANUARY 28, 1869.

Petitioner : Major Anson.

Respondent : Colonel Dyott.

Counsel for Petitioner : Mr. Powell, Q.C., Mr. Macnamara.

Agent : Mr. Birch.

Counsel for Respondent : Mr. Dowdeswell, Q.C., Mr. Young.

Agents : Mr. W. Greene, and Mr. Dyott.

THE petition contained the usual allegations of bribery, &c., and prayed the seat.

The evidence related for the most part to cases of individual bribery by offer of employments and promises of situations, and in one case by a promise of an order for admission to a hospital. No attempt was made to show anything like an organised system of corruption.

Married
woman not to
be cross-ex-
amined as to
any conversa-
tion with her
husband.
(2) 19.

In the course of the case :—

A witness was asked in cross-examination :—

Q. Do you not know that your husband promised the Respondent to vote for him ?—A. I do not know.

Q. Have you not heard from your husband that he did promise it ?

MR. JUSTICE WILLES :—You cannot ask a woman as to a conversation with her husband.

Upon a witness giving evidence as to a case of bribery, of a statement made in the presence of one Hinkley, whose agency had not been previously proved,

Evidence admissible of statements made in the presence of one who may be afterwards proved agent.
(2) 69.

Mr. *Dowdeswell* said a question arose whether evidence of statements not made in the presence of the parties themselves was admissible.

Mr. Justice WILLES said:—If it should appear afterwards that Hinkley was not the Respondent's agent, this evidence would then come to nothing; but if, on the other hand, Hinkley was proved to be the Respondent's agent, the statements referred to in the evidence ceased to be behind the back of the Respondent, because they were made in the face of his agent. He could not at present exclude statements made relevant to the question of bribery; he presumed the agency of Hinkley was going to be proved.

Evidence having been given that a voter (Rogers) had been bribed by one Hinkley, but neither he nor his wife having been called as witnesses,

Onus of calling person alleged to have been bribed is on petitioners.

Mr. Justice WILLES said:—Are you not going to call Rogers or his wife?

(2) 76.

Mr. *Powell*:—No.

Mr. Justice WILLES:—Whether they admit it or deny it, it seems to me they ought to be called.

Mr. *Powell*:—Rogers having voted for the Respondent, we thought we would not call him.

Mr. Justice WILLES:—I do not think that is a reason for not calling him at all. It may be right that the onus should be upon the Respondents of calling Hinkley, but I do not see how you can throw upon them the burden of calling the voter and his wife, who are the very persons upon whose evidence the question arises. If neither of you call those persons, I shall have to call them.

Mr. *Powell*:—I have not the least objection to call them for the information of the Court.

They were then called.

It having been proved that one Wilson, after being canvassed by an agent of the Respondent on the morning of the polling day, and after refusing to promise his vote, was told by the agent to go

Effect of one case of treating standing alone.
(2) 192.

and get something to drink; eventually he voted for the Petitioner; whereupon

Mr. Justice WILLES took occasion to intimate that there might be cases, which, if they stood alone, would come under section 23 of 17 & 18 Vict. c. 102, and would not be enough to upset an election, but that if there were many of them they would be sufficient to do so under section 4.

Discrediting
own witness.
(3) 91.

A witness (Barlow) was called to prove that Respondent had promised him a place in a hospital if he would vote for him; Barlow would not admit this, and upon that a witness (Walmsley) was called to prove that Barlow had before admitted it to him.

Q. State what Barlow said respecting the Respondent.—A. I asked Barlow why he was going to vote for the other party (meaning the Respondent)? He said they had promised him a place in the hospital.

Q. Have you had any conversation with him since then about that statement?—A. I asked him on the morning of the election whether he had made up his mind which way he was going to vote. He said he did not know yet.

Mr. Justice WILLES :—I think I ought to interpose. All you can ask this witness is in the very words that you put to Barlow. Ask him whether Barlow did say that to him. That ought to conclude his examination.

Mr. *Macnamara* (to witness) :—Did Barlow say to you or did he not say to you that the Respondent had promised to get him a place in the hospital?—A. Yes.

Presence of
Respondent at
public-house
not conclusive
evidence of
treating, unless
amount con-
sumed is
extraordinary.
(3) 354.

In support of the charge of treating it was proved that a considerable amount of drinking had been going on at a public-house while the Respondent was there addressing a meeting.

Mr. *Powell*, for the Petitioner, asked whether the Court thought that he should call the landlord of the public-house in question?

Mr. Justice WILLES intimated that it was his impression that a case of treating was not proved by merely showing that a candidate went to a public-house to address a meeting where drinking was going on, unless it was proved that the drinking was more

than might be expected to take place at a house where people met together. It did not appear to him that that would be sufficient to bring his mind to the conclusion that necessarily the candidate paid for the drink that was there supplied. A case of treating was not made out unless it was shown that an extraordinary amount of drink was consumed which could not have been paid for by the persons there. As to calling the landlord, he must leave that to counsel's own discretion.

It being admitted by the Respondent that one Coxon went round with him and canvassed the electors,

Agent to
canvass.
(4) 21.

Mr. Justice WILLES said:—I think it may be taken that those who have hitherto had the decision of election cases have held that an agent to canvass would be an agent within the statute.

It having been stated on behalf of the Respondent that he employed no committee, but that there were persons who acted in drawing up cards, and so forth,

Committee-
men.
(4) 23.

Mr. Justice WILLES said:—That is the modern fashion apparently; but persons who do what committee-men formerly did, and are seen taking an active part, are just as much committee-men as if they were called so.

Mr. Justice WILLES in his judgment declared the Respondent duly elected.

He said, in the course of it, as to undue influence:—"The proper definition of that undue influence, which was dealt with in 17 & 18 Vict. c. 102, s. 5, is using any violence or threatening any damage, or resorting to any fraudulent contrivance to restrain the liberty of a voter so as either to compel or frighten him into voting or abstaining from voting otherwise than he freely wills."

Undue in-
fluence defined.
17 & 18 Vict.
c. 102, s. 5.

As to treating, he said:—"It may be doubted whether treating, in the sense of ingratiating by mere hospitality, even to the extent of profusion, was struck at by the common law. It is, however, certain that it is now forbidden, under penalties, by the 17th & 18th Vict. c. 102, whenever it is resorted to for the purpose of pampering people's appetites, and thereby inducing electors either to vote or to abstain from voting otherwise than they would have

When treating
avoids an
election.
17 & 18 Vict.
c. 102, s. 36.

done if their palates had not been tickled by eating and drinking supplied by the candidates; and it is certain that by the 36th section of that Act, any candidate who by himself or his agents resorted to treating as a means of being elected, not only spends his money at the time, but does so with a certainty that if he be detected, or if any of his agents even without his knowledge or authority should have treated electors, the seat gained under such circumstances is forfeited, even although the majority might not be composed of persons so treated."

How treating
proved.

As to the proof of treating, he said:—"In order to prove treating it must be shown, not merely that eating and drinking went on during the election, and went on under the eyes of the candidate (eating and drinking must always go on), but it must be shown that the eating and drinking was supplied at the expense or upon the credit of the candidate, either by his authority or by the authority of one or more of his agents in order to influence voters."

General
bribery.

As to bribery, he said:—"With respect to bribery, the law is perfectly clear. Bribery at common law, equally as by Act of Parliament, avoided any election at which it occurred. If there were general bribery, no matter from what fund or by what person, and although the sitting member and his agents had nothing to do with it, it would defeat an election, on the ground that it was not a proceeding pure and free, as an election ought to be, but that it was corrupted and vitiated by an influence which, coming from no matter what quarter, had defeated it and shown it to be abortive."

Bribery by
agents.

At Common
Law by 17 &
18 Vict. c.
102, s. 36, and
by Parliamen-
tary Elections
Act, 1868, s.
43.

As to bribery by agents, he said:—"If it were shown that the agent of the member bribed even without the authority, and contrary to the express orders, of the member, his seat was forfeited—not by way of punishment to the member, but in order to avoid the danger that would exist if persons subordinate to the candidate during an election were led away, by their desire to benefit their superior, into illegal acts, the precise extent of which it was difficult to prove, but a single one of which, if proved, it was the policy of the law to hold, would have the effect of avoiding the proceeding. That a Member was thus answerable for his agent at common law—his agent in the sense of conducting the election,

not merely in the sense of being authorised to bribe—is perfectly clear. It was so laid down as clear by Lord Tenterden, before the Act of the 17th & 18th Vict. c. 102, s. 36. That section where it speaks of agents must be construed by the light of the common law, and must be read as including agents authorised in the conduct of the election or to canvass, and not merely agents authorised to bribe. If there could be any doubt that such was the law, that doubt is set at rest by the 43rd and following sections of the Parliamentary Elections Act, 1868, by the former of which, the 43rd, bribery committed with the knowledge and consent of a Member subjected him for seven years to the disability of being returned to Parliament, of voting at an election, or of holding any judicial office. That 43rd section leaves the case of bribery by agents to be dealt with by those which follow, and the result is clear. I have been thus elaborate in stating the result of the law on the subject, in consequence of doubts which have been thrown out of late as to whether a single act of bribery proved either against a Member or against his agent engaged in the conduct of an election will have the effect of defeating the election.”

Passing on to specific instances of alleged bribery, he said, as to the case of one Barlow, whom the Petitioners alleged to have been bribed by a promise of a place in a hospital,—“Barlow was an old man in years and failing, and was very desirous of getting into St. John’s hospital. Barlow knew that the Respondent’s agent, Greene, had some interest at the hospital. In the conversation in which Barlow was canvassed by Greene, he expressed a desire to be taken into the hospital; Greene gave him an answer which rather put him off than promised him. Barlow knew well beforehand that Greene had an interest at the hospital, and Greene knew well beforehand that Barlow would like to be taken into the hospital. That being so, the conversation amounted to nothing more than putting into words what each knew before, and did not amount to a promise that he should be taken into the hospital if he voted, as he afterwards did, for the Respondent. To prove a corrupt promise, as good evidence is required of that promise illegally made, as would be required if the promise were a legal one, to sustain an action by Barlow against the Respondent

Corrupt
promise.

Measure of
evidence
necessary.

All influence
not necessarily
corrupt.

upon Barlow voting for him, for not procuring or trying to procure him a place in the hospital.

"The law cannot strike at the existence of influence. The law can no more take away from a man who has property or who can give employment the insensible but powerful influence he has over those whom, if he has a heart, he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates. It is only abused in cases of this kind where an inducement is held out by a promise in the terms of 17 & 18 Vict. c. 102, s. 2, a promise to induce voters to vote or not to vote at an election."

As to the case of Baxter he said:—

Insensible
influence not
necessarily
corrupt.

Corrupt use of
such influence
must be clearly
proved.

"Baxter had been in the employment of Symonds an agent of the Respondent; he left the employment in 1867, in consequence of some dispute which had arisen between the master and the man; but Baxter was anxious to get back into Symonds' employment, and an insensible influence existed in consequence of this upon the mind of Baxter at the time when Baxter voted for the Respondent. Baxter was taken back into Symonds' employment very soon after the election, and it was proved that Symonds would not or probably might not have taken Baxter back unless he had so voted. That does not prejudice the decision of the question. But it was not proved that Symonds made any express promise to Baxter to do so; it was left to inference amounting to suspicion only, and upon such inference and suspicion I must decline to act for the purpose of defeating the election."

Payment of]
travelling
expenses, 21
& 22 Vict.
c. 87, s. 1.
Representation
of the People
Act, 1867,
s. 36.

As to the case of one White, a case in which it was alleged that bribery had been committed on behalf of the Respondent by a gift of travelling expenses, he said:—It was proved that one White, a voter who had ceased to reside in the borough, received 9s. 6d. in postage stamps for travelling expenses in a letter anonymous, but containing the slip "Vote for Dyott." White eventually did not vote for the Respondent but for the other candidate. In deciding whether the money was sent with the intention of influencing the mind of the voter, it was impossible to exclude

the fact that White did not vote for the Respondent but for the other candidate, for as a matter of result if the case was to be judged of by the result, White was not influenced. That, however, he said, would not prevent a bribe from being a bribe, since a man who votes for one candidate after having received money for promising to vote for the other is guilty of bribery equally as if he voted according to his promise, even if at the time he promised he had no intention of fulfilling it. Neither is the bribe the less complete because the voter was one who never ought to have voted, because he had ceased to be resident, and had by the 6 Vict. c. 18, s. 79, ceased to have a right to vote at the election. The law upon the subject of payment of expenses to electors is to be found in the case of *Cooper v. Slade*, 6 *House of Lords Cases*, 746, and in the 21 & 22 Vict. c. 87, s. 1, an Act which was passed soon after the decision in that case which says, "It shall not be lawful to pay any money or give any valuable consideration to a voter for or in respect of his travelling expenses." The remaining enactment on the subject is the Representation of the People Act, 1867, s. 36, by which leaving the question of giving a lift to the poll to a person in the borough untouched, it is made unlawful to pay either to the voter or to any person for whom conveyances are hired any money on account of conveyances to the poll.

At the conclusion of the case, and before judgment was given, Costs.

Mr. Justice WILLES asked whether either side proposed to apply for costs in the event of a decision in his favour.

Mr. *Powell*, for the Petitioner, said:—I will make a fair arrangement with my learned friend if he likes. If he will not, I will not.

Mr. *Dowdeswell*, for the Respondent, said:—I leave it entirely in your Lordship's hands.

Mr. Justice WILLES:—I understand that neither party intends to apply for costs in any event.

Eventually each party paid their own costs.

CASE VI.
BOROUGH OF BRADFORD.

BEFORE MR. BARON MARTIN, JANUARY 26, 1869.

Petitioners: John Haley, Charles Hastings, Angus Holden, Titus Salt, jun.

Respondent: Henry William Ripley.

Counsel for Petitioners: Mr. Giffard, Q.C., Mr. Metcalfe, Mr. Mellor.

Agents: Mr. Charles Mills, Mr. James Hargreaves.

Counsel for Respondents: Mr. Overend, Q.C., Mr. Price, Q.C., Mr. Littler.

Agent: Mr. David Little.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

The following special report was made as to the facts in this case.

“It was proved that the said Henry William Ripley had opened an unlimited credit at his bankers in favour of his agent, who availed himself of it to the extent of upwards of 7,200*l.*, and who sent to the returning officer a mere abstract of totals of outlay unaccompanied by vouchers; and that this was knowingly done, contrary to the statute 26 & 27 Vict. c. 29, s. 4. That in one ward of the said borough, inhabited principally by Irishmen of the working class, large numbers were influenced by corrupt practices, committed by the agents of the said Henry William Ripley, and that upwards of one hundred public-houses and beer-houses were opened as committee-rooms or pretended committee-rooms, in the interest of the said Henry William Ripley, where drink without payment was supplied to voters, which was afterwards paid for by the agents of the said Henry William Ripley.”

In the course of the case :—

A witness examined for the Petitioners proved treating at one of the Respondent's public-houses.

Mr. *Giffard* called for the bill sent in to the Respondent.

Mr. *Overend*, for the Respondent, objected to producing it. The Petitioners had no right to call for those bills which the Respondents held to be unfounded claims which he had resisted and upon which he denied his liability. The mere fact that a claim had been sent in and received by post or messenger by Respondent's agent did not make it binding against the Respondent.

Mr. Baron MARTIN said :—The Petitioners might call for any document in the possession of the Respondents ; upon the document being produced, it became evidence in the cause as a document coming from the Respondent's possession and produced by him. The Respondent might give any explanation of it afterwards. It might be strong evidence or it might be worthless, but *prima facie* it was evidence.

Any account sent in to Respondent may be called for. *Prima facie* evidence against him, whether disputed or not. 37.

A witness, Michael Moran, examined for the Petitioners, was asked as to the numbers of a committee which he had assisted in forming, and answered vaguely.

Q. Just remember how many the committee consisted of?—

A. Sometimes more, sometimes less.

Q. What was the maximum number?—A. Perhaps twenty.

Q. Did you tell a Mr. Miles that it was thirty-five or forty?

Mr. *Overend*, for the Respondent, objected. This was not evidence. He was not a hostile witness.

Mr. Baron MARTIN :—If the Petitioners call a witness, they must call him and deal with him as at *Nisi Prius*.

Mr. *Giffard* said :—In order to lay a foundation for asking to be allowed to treat witness in a different manner to ordinary evidence in the cause, he tendered the evidence for his Lordship to consider whether the witness was hostile.

Mr. Baron MARTIN said the question must not be asked. When he saw the witness was hostile he would deal with him accordingly. At present he saw nothing adverse in him.

Witness not to be cross-examined until pronounced adverse by the judge. 39.

A witness, Michael Coyne, examined for the Petitioners, proved

Parties to
Petition.
Notice to pro-
duce docu-
ments in their
possession.
19.

that at the request of one Kitcheman he had signed a document which Kitcheman had then taken away. He was about to state the substance of it when

Mr. *Giffard* called for the document, and said that notice to produce had been given.

Mr. Baron MARTIN said the parties were the four Petitioner and the Respondent, and there was notice to produce, which would affect any document in the possession of the Respondent, but no any document in the possession of Kitcheman, even if Kitcheman was proved to be an agent.

Paid canvasser,
and one paid
to use influence.
Distinction.
17 & 18 Vict.
c. 102, s. 2.

It having been proved that a number of persons who were known to have influence with the Irish voters—of whom there were many in the borough—were paid on behalf of the Respondent to use their influence with these voters to restrain them from voting against the Respondent,

Mr. *Price*, for the Respondent, contended that what was done was not distinguishable from paid canvassing—a thing which the statute clearly did not mean to forbid.

Mr. Baron MARTIN said :—There were a number of voters whose support it was deemed desirable to obtain, and money was given to a few persons to exercise their influence on those persons to induce them to refrain from voting. That seemed to him to come within the very words of the statute. It was quite different from canvassing, from paying a person for his labour, and from using such persuasions as were lawful when inducing a voter to vote.

Statement of
expenses con-
travening.
26 Vict. c. 29,
s. 4.
Prima facie
case against
Respondent.

It was proved that Respondent's agent had sent in to the returning officer what purported to be a detailed statement of Respondent's expenses, but that it consisted merely of heads of expenses, amounting in all to £7211 16s. 7d., amongst which were the following items :—

Committee rooms and expenses . . .	£1997 18 3
Messengers, clerks, and canvassers . . .	1973 11 2
Miscellaneous expenses	225 5 1

The whole on one sheet of paper, and without a single voucher accompanying it. It was also proved that the agent had done this, knowing at the time that he was acting contrary to 26 Vict. c. 29, s. 4.

Mr. Baron MARTIN said, as to this, in his judgment:—"My impression is, that if counsel for the Petitioners had rested their case simply upon this, and had put in this account, and had proved that no bills or vouchers had been delivered to the returning officer, I should have called upon the Respondent to prove the legality of every payment contained in this account from the beginning to the end of it. My impression is, that that alone would have made a *prima facie* case against any person, especially when I call attention to the amounts contained in that paper."

Mr. Baron MARTIN, in his judgment, declared the Respondent unseated on the ground of corrupt treating.

Commenting on the evidence of treating, he said :—"I mean to give my judgment on what has been clearly established before me, viz, that the Respondent was by his agents guilty of treating within the meaning of 17 & 18 Vict. c. 102, s. 4. The material evidence is as short as possible. It is proved that there were open in this town, by persons for whom it is admitted Respondent was responsible, 158 public-houses, and that in 115 of these public-houses refreshments were supplied. Counsel for Respondent stated that these refreshments were supplied to people who had done work, but the evidence is directly to the contrary. The evidence is that persons were admitted to these committee-rooms ; that the farce was gone through of putting down their names as committee-men ; and that refreshments were supplied to them, whether they were voters or non-voters or messengers. It was proved by the Respondent's own witnesses that directions were given that at these public-houses refreshments were to be afforded to the persons who came there, and that they were afforded both to voters and non-voters and to any person admitted to the room, with the caution that they should not be excessive, but reasonable. That is the evidence on the part of the Respondent. The statute enacts, 'That every candidate at an election who shall corruptly give, or be accessory

Treating, when
corrupt.
17 & 18 Vict.
c. 102, s. 4.

to giving, or shall pay any expenses incurred in eating, drinking, entertainment, or provision, in order to be elected, shall be guilty of the offence of treating;’ and it has been as contravened by the Respondent as it possibly could be.”

Costs.

Costs follow the event.

CASE VII
BOROUGH OF BRADFORD.

BEFORE MR. BARON MARTIN, JANUARY 29, 1869.

Petitioners : Samuel Storey, Thomas Garnett.

Respondent : William Edward Forster.

Counsel for Petitioners : Mr. Price, Q.C., Mr. Waddy.

Agent : Mr. Mumford.

Counsel for Respondent : Mr. Serjeant Ballantine, Mr. Serjeant Sargood,
Mr. S. Pope.

Agent : Mr. John Henry Wade.

THE petition contained the usual allegations of bribery, treating, &c., but did not pray the seat.

It appeared that a considerable number of public-houses were made use of by committees acting for the Respondent, and that on the day of the election refreshment-tickets were issued to the members of these committees ; but it was shown that the tickets were, as far as possible, distributed only among those who were *bond fide* carrying on the work of the election, and that in point of amount the expenditure thus incurred by the Respondent was not unreasonable.

Some attempt was made to prove bribery by gifts of money, but the evidence on this point was stated by the Judge to be beneath contempt.

In the course of the case,

It having been proved, in support of the charge of treating, that

Treating
"corruptly."
17 & 18 Vict.
c. 102, s. 4.

refreshments were provided by the Respondent at a number of public-houses for committee-men and others who were engaged in carrying on the work of the election,

Serjeant *Ballantine*, for the Respondents, admitted that refreshments had been supplied on the part of the Respondent at sixty-two public-houses; and he said that the act of so providing them was intentional, but he denied that it was done corruptly to influence voters. He contended that as long as refreshments were not provided for the purpose of influencing a vote, there was no law to forbid their being provided. The word "corruptly," which governed the section (17 & 18 Vict. c. 102, s. 4) relating to this matter, meant more than merely "wilfully," otherwise it would not be introduced, as the section would be perfect without it. But supposing "corruptly" meant merely "wilfully," then the meaning of "wilful" must be governed by the words "influencing a voter."

Mr. *Price*, for the Petitioners, contended that the meaning of "corruptly" was merely "wilfully," or "deliberately," simply doing the thing forbidden by the statute, even if in good faith, and he quoted the case of *Cooper v. Slade* in support of his view.

Mr. Baron MARTIN said, as to this, in his judgment, "the 2nd section of 17 & 18 Vict. c. 102, deals with bribery, and bribery is, as ordinarily understood, the giving of money. The enactment is, 'every person who shall give any money to a voter to induce the voter to vote is declared to commit an offence.' There is nothing there said about 'corruptly.' It is simply the giving of money to induce a voter to vote that is declared to be an offence. The law fixes upon the act of giving money to a man to vote; every man must know that it is an unlawful and wrong thing to give it; and every man who receives it must know, at least if he be a man in a certain condition of life, that he is doing a dishonest act in being bribed. There the Act stops, and there is nothing about 'corruptly' in it. It does not apply to the mind of the man who offers, or of him who takes; it turns upon the fact of giving money to a man to vote. That this is the meaning of the Act is shown beyond all doubt by the next two lines, which say, 'or shall corruptly do any such act on account of such voter having voted.' The section draws a distinction between them, and it says that if

you give money to a man to vote before an election, that is *ipso facto* bribing; but if the money is given after a man has voted, you must show that it was done corruptly. What is the exact meaning of the word 'corruptly?' I am satisfied that it means a thing done with an evil mind and intention, and unless there be an evil mind or an evil intention accompanying the act, it is not 'corruptly' done. 'Corruptly' means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object. I have called attention to the 2nd section of this Act, in order to explain what is the true meaning of the word 'corruptly.' The words upon which I have here to put a construction are those of the fourth section, 'Every candidate who shall "corruptly," by himself, or by any person, give or be accessory to the giving, or shall pay wholly or in part, any expense incurred for meat or drink, in order to be elected or for being elected, shall be deemed guilty of treating.' That which is provided against is, that the candidate shall not 'corruptly' give any meat or drink 'in order to be elected;' and I think the meaning must be given to the word 'corruptly,' which I have indicated, viz., a thing done with an evil mind; there must be some evil motive in it, and it must be done in order to be elected."

A witness, Timothy Allen, whose name was not down in the particulars of treating given under a Judge's order, was asked a question which appeared to be intended to prove that he had been treated; whereupon

Object of
rule 7.
158.

Sergeant *Ballantine*, for the Respondent, objected, on the ground that his name was not in the list of persons treated.

Mr. Baron MARTIN, after reading out the seventh rule said, that this rule was confined to a Petitioner claiming the seat; that at the time when the rules were made, it was thought that inasmuch as there was this particular rule as to the case of a candidate claiming the seat, it was but reasonable to apply it to other cases which were not strictly within the rule. That is how the thing arose at first. It was thought that particulars might be given, almost as a matter of course, to a very considerable extent. It was then suggested that some limitation had better be made

upon it, for that it would give an opportunity of tampering with the persons whose names were mentioned, in the particulars, and getting them out of the way, and that it might do more harm than good; the consequence was that there was a limitation put upon it, and we all agreed that we would wait and see what was the operation of the rule in the first five cases that we each had set down for hearing, and see whether it would work well or not.

Mr. Baron MARTIN further said, with regard to the Judge's order made in this particular case, that if there was any restriction in the order, of course the Petitioners must be bound by it, but that if not, they were quite free, and that it was his own wish to make the thing as free as possible.

Order for particulars; effect of in limiting evidence.

161.

A witness, Sarah Halliday, examined for the Petitioners, being about to give evidence of treating, which had taken place at the Spinkwell Inn,

Serjeant *Ballantine*, for the Respondent, objected that the name of this house was not mentioned in the Petitioners' particulars given pursuant to the Judge's order, which was as follows:—

"I do order that the Petitioner shall, three days before the day appointed for trial, leave with the Master, and also give the Respondent or his agent particulars in writing, of all persons alleged to have been bribed, of all persons alleged to have been treated, of all persons alleged to have been unduly influenced, and that no evidence shall be given by the Petitioners of any objection not specified in such particulars, except by leave of a Judge, upon such terms, if any, as to amendment, postponement, and payment of costs as may be ordered. And I further order that the Petitioners shall, within four days from this day, leave with the Master, and give the Master particulars in writing of the nature of the corrupt or illegal practices charged."

Mr. Baron MARTIN said that the giving of the names of the houses was not necessary under the order.

Mr. Baron MARTIN in his judgment declared the Respondent duly elected.

Treating.

After stating that he was not satisfied, from the evidence, that

bribery or treating or undue influence previous to the polling-day had been proved against the Respondent, he said the next question he had to consider was, whether what was done on the polling-day was treating within the meaning of 17 & 18 Vict. c. 102, s. 4. He said:—"What was done on the polling-day was this: a number of persons who were supporters of the Respondent had formed themselves into committees to carry his election. In one word, there were about 1400 persons who voted for Ripley, 1300 for Respondent, and 1200 for Miall, and there were sixty refreshments provided and supplied by means of tickets. The Respondent's agent stated that he and Mr. Little, who was engaged on the other side, went to the town clerk and agreed that he should provide refreshments for the check clerks in the polling-booths, and that they would afterwards repay the expenses so incurred. It is agreed that this was a necessary and innocent act. According to the evidence it was doing precisely the same thing in the Respondent's committee-rooms as was agreed to be done at the polling-booths by both parties, that refreshments should be given to the men who required them, to enable them to carry on the work of the election. Those refreshments were given to nobody else, and care was taken to give them to no persons except those who were actually engaged in labour. I am of opinion that that does not fall within 17 & 18 Vict. c. 102, s. 4. That which is provided against is, that a candidate shall not 'corruptly' give any meat or drink in order to be elected; and I think that to put a proper construction upon the Act, the meaning which I have indicated must be given to the word 'corruptly,' viz., a thing done with an evil mind. There must be some evil motive in it, and it must be done 'in order to be elected.' But those are negatived. It was not given 'in order to be elected,' because it was known how all these men would vote. They were there because they were voters who had declared their intention to support the Respondent. It is therefore idle to suppose that the meat and drink were given to induce them to vote. I think therefore that there is an absence of anything to satisfy me that it was done 'corruptly,' and in my judgment the doing of what was done, believing it to have been *bona fide* and honestly done, does not come within the meaning of 17 & 18 Vict. c. 102, s. 4."

Refreshments
given to com-
mittee-men.

General prevalence of corrupt practices.

Election void at common law.

Influences due and undue.

Speaking of the evidence which had been given in support of the petition, and observing that it did not satisfy him that the election was void at common law, he said:—"The law is that voters should exercise their franchise freely; that is the expression to be found in the law books; and the meaning of 'freely' is that a man upon whom the Legislature has conferred the elective franchise, should exercise his own judgment, and should arrive at a conclusion which of the candidates he honestly believes is the best person to represent the borough, and give his vote for him. If it could be, it ought to be given from the man's own judgment, and no influence whatever ought to be brought to bear upon him. The policy and the theory of the law is, that a man upon whom the elective franchise is conferred should judge for himself which is the best and preferable candidate, and give his vote accordingly. But influences are brought to bear upon men which cannot be prevented. There are some influences which are called due influences, and other influences which are called undue influences, and the law has endeavoured to punish the use of undue influences. Amongst these influences there are what are called bribery, treating, and oppression, that is, an improper and undue pressure put upon a man. But if pressure is put upon a man, or a bribe is administered to him, no matter by whom, or refreshments are given to a man, no matter by whom, for the purpose of affecting his vote, the effect is to annihilate the man's vote, because he gives his vote upon an influence which the law says deprives him of free action; he becomes a man incompetent to give a vote, because he has not that freedom of will and of mind which the law contemplates he ought to have for the purpose of voting. But that affects the man alone, it does not affect the candidate; it has merely the effect of extinguishing the vote, and if there was a scrutiny for the purpose of ascertaining who had the majority of lawful votes, that man's vote ought to be struck off the poll, but that is all. But it has been long held, before these Acts of Parliament passed at all, that by the common law of the land, that is, law not created by the enactments of Acts of Parliament, bribery, undue influence, and undue pressure vitiate an election. So that if it had been proved that there existed in this town generally, bribery to a large extent, and that

it came from unknown quarters, that no one could tell where it had come from, but that people were bribed generally and indiscriminately ; or if it could be proved that there was treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it,—by the common law such election would be void, because it would be carried on contrary to the principle of the law.”

Costs followed the event.

Costs.

CASE VIII.
BOROUGH OF WARRINGTON.

BEFORE MR. BARON MARTIN, FEBRUARY 4, 1869.

Petitioners: Miles Crozier and others.

Respondents: Mr. Rylands and the Mayor of Warrington.

Counsel for Petitioners: Mr. Price, Q.C., Mr. Campbell Foster.

Agents: Messrs. Baxter, Rose, and Norton, Messrs. Beamont and Davies.

Counsel for Respondents: Mr. Quain, Q.C., Mr. Edwards, Mr. Coventry.

Agents: Messrs. Wyatt and Hoskins, Messrs. Blair and Charlton, Mr. Moore.

Allegations in
petition as to
irregularities at
the election.

THE petition contained the following allegations amongst others. That several votes were duly tendered or intended to be so in favour of Mr. Greenall, but they were not in any way included or taken into account, and that if some of the votes of the Petitioners and of others were not duly tendered in the form required by law, it was solely in consequence of the irregularities and confusion which prevailed at the polling-booth, No. 1, for the south-east polling district, and in consequence of the defective arrangements made by the returning officer, and the negligence and incompetency of the deputy returning officer and poll-clerk for this booth; that the votes of several voters were never recorded, and the said poll-clerk did not duly and indifferently take the poll; and that similar mistakes and errors were committed by other poll-clerks.

Prayer of
petition.

The petition prayed that it might be determined that the Respondent Rylands was not duly elected, and that the election was void; and, secondly, that if the election were not declared void, it

might be determined that the Respondent Rylands was not duly elected, but that Mr. Greenall was and ought to have been returned.

In support of the first part of the prayer of the petition it was proved that at one of the polling-booths, upon the resignation of another man, a person named Dickson, who was deemed fit for the post, was appointed to be poll-clerk. Dickson went to the polling-booth and took his seat at first in a place which was not the usual place for the poll-clerk to sit at, but he was afterwards removed by the returning officer to another and a better place. The persons who went to vote instead of going in steadily one by one, rushed up in a crowd in front of the place where Dickson was sitting, and, instead of orally tendering their votes they held up tickets for him to take, and then thrust them over on to his book. Some of these tickets were taken in by a man named Lowe, a check-clerk of one of the candidates, who was sitting in the booth, and by him handed on to Dickson, without any personal tender of the vote being made to Dickson by the voter himself. Partly owing to this rush of persons, and partly also in consequence of Dickson not turning out to be a very competent man, there was a confusion at this polling-booth for an hour or so, and the votes of a number of persons were either not recorded at all or wrongly recorded.

Confusion at polling booth does not avoid election.

Duty of every voter to tender his vote to poll clerk.

Mr. *Price*, in summing up the Petitioner's case, contended that in consequence of this confusion, and owing to the incompetency of the poll-clerk Dickson, the electors had, by no fault of their own, been prevented from exercising their franchise freely and indifferently, and that therefore the election ought to be held void. In support of his argument he cited the Harwich case* in which a committee had held an election to be void where the poll had been closed a few minutes too soon, whereby one elector and one only had been prevented from voting, although the majority was six. He submitted that it was the natural thing, not for the voter to ask for the poll-clerk, but for the poll-clerk to announce himself, and that it was the duty of the returning officer to take care,

* 1 Power, Rodwell & Dew's Reports, 314.

as each voter came up, that he tendered his vote to the right person, otherwise that voter would not have that free opportunity of exercising his privilege of voting to which he was entitled. This was not a question of ordinary scrutiny, or a seeing whether the unsuccessful candidate should have these votes added to his number, but rather whether the electors had been deprived, not by their own wrong, of their privilege of voting. Although in some cases the tender had not been a good one, that was not through the fault of the voters, but through the fault of the returning officer.

Mr. Baron MARTIN, in giving judgment on the first prayer of the petition, said as follows:—

“I am of opinion this is not a void election. It was stated by Mr. Price that it was entirely through the fault of the poll-clerk Dickson, that the poll was not properly taken. That is not correct. It was quite as much the fault of the persons who were crowding up to him and presenting their tickets in such a manner as to prevent him from taking them one by one. Then again, Mr. Lowe ought never to have taken a ticket from a voter. I do not mean to insinuate that Mr. Lowe meant wrong, but I say that Mr. Lowe and the voters, as well as Mr. Dickson, were parties to the irregularity that took place. Then the question is, is this to be declared a void election? Supposing it happened that the votes of half-a-dozen out of 2000 or 3000 voters are omitted to be taken, are all the other votes to be set aside, and the election declared void? It would be in my opinion ridiculous to say that because at one booth there was an irregularity, the whole of the rest of the borough should be put to the trouble of a new election, and all that has taken place declared null and void. I adhere to what Mr. Justice Willes said at Lichfield, that a Judge to upset an election ought to be satisfied beyond all doubt that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside.

Mr. *Price* then stated that the second prayer of the petition would be abandoned.

Costs.

Mr. Baron MARTIN said:—“If any costs have been incurred by

the returning officer by reason of the petition against him he must be reimbursed; with respect to the other parties to the petition they must pay their own costs. I think it was a reasonable and fair petition."

The following points were decided in the course of this case.

A witness, Dewhurst, proved as follows :—

Tender of vote.

When I went to the polling-booth, Lowe, a check-clerk, was sitting in the middle, and Dickson, the poll-clerk, was the first on the bench. I gave my card to Lowe, thinking he was the poll-clerk, and told him I voted for Greenall. I waited a sufficiently long time, thinking they were writing it down, and I then said, "Is that right?" Lowe answered "Right." It was not till the next morning that I found my name was not entered on the poll.

How to be made.
(2) 108.

Mr. Baron MARTIN :—I am clearly of opinion that was a bad tender.

Another witness gave the following account of the way in which he voted :— (1) 320.

"I told the poll-clerk Dickson the number, and said, 'This is my card, Henry Bennett, vote for Greenall, No. 244 is my card.' He took the card, but I do not know whether he wrote it down or not, but he said, 'All right.'"

Q. And then you went away?—A. Yes.

Q. And you found afterwards on inquiry that your vote had not been entered?—A. Yes.

Mr. Baron MARTIN :—When you vote again, do not leave the place till you see that your name is entered.

In the course of the case, Mr. Baron MARTIN said :—

"If a man, instead of asking who was the person to take his vote, were to go and put a ticket before a man who was not the poll-clerk and leave it there, that man has not voted at all. He has no right to complain. He ought to have taken the ordinary trouble to ascertain that he had voted aright. What more can the Mayor possibly do than put a poll-clerk in the booth; if people will not inquire who is the poll-clerk, they must take the consequence." (1) 230.

And in the course of his judgment he said further as to this :—

“The ticket is merely given to the voter to enable him to vote with greater ease, it has nothing to do with the voting. Properly speaking, the poll-clerk ought to have nothing to do with tickets, but he should take from the mouth of the voter ‘for whom’ he votes, his number on the register, and his address. The 2 Will. 4, c. 45, s. 65, enacts, that the returning officer shall appoint a clerk to take the poll, who, at the conclusion of the election, is to seal up the poll-books and publicly deliver them to the returning officer. It is therefore clear that the person to take the poll is the poll-clerk, and it is the duty of all persons who go to vote to ascertain who that poll-clerk is, and they must take the trouble to inquire. The Act clearly means that it is to the poll-clerk whom the returning officer has appointed to take the poll that the communication of the will of the voter must be made, and that the communication of that will to any one else will not do. It would be improper and wrong to hold that a communication made by a voter to a person not the poll-clerk, could be considered a legal tender of his vote.”

Votes may be added to the poll if duly tendered.

(2) 2.

At the commencement of that part of the case which related to the second part of the prayer of the petition,

Mr. *Price*, for the Petitioners, handed in a list of the persons whose names he submitted should be added to the poll.

Mr. Baron MARTIN asked if there was any precedent for adding votes to the poll, when voters had done their utmost to record their votes, and by the mistake of the poll-clerk their names were omitted?

Mr. *Price* :—“I can find no precedent for that.”

Mr. Baron MARTIN (to Mr. Quain) :—“I believe you do not dispute that if a vote has been duly tendered it may be added to the poll.”

Mr. *Quain* :—“Not if in your Lordship’s opinion it has been duly tendered.”

Mr. Baron MARTIN :—“That is a mere matter of fact for me.”

CASE IX.

BOROUGH OF WESTBURY.

BEFORE MR. JUSTICE WILLES, FEBRUARY 2, 1869.

Petitioner : Mr. Abraham Laverton.

Respondent : Mr. J. L. Phipps.

Counsel for Petitioner : Mr. Cole, Q.C., Mr. Henry James.

Agents : Mr. Rowland Rodway, and Messrs. Warry, Robins, and Burgess.

Counsel for Respondent : Serjeant Parry, Mr. Besley.

Agents : Messrs. Pinniger and Son, and Messrs. Godwin and Pickett.

THE petition contained the usual allegations of bribery, &c., and prayed the seat upon a scrutiny.

It was proved that a manufacturer in the town, who was an agent of the Respondent, told his workmen that no man should remain in his employment who voted for the Petitioner, who was his rival in trade, and that these men or some of them, were obliged to leave his employment in consequence of their refusing to abstain from so voting.

Evidence was given for the Respondent in support of a recriminatory charge against the Petitioner, which, although it failed, was of a serious character, and was said by the Judge to have been rightly brought forward.

In the course of the case,

It was proved that one Harrop, a manufacturer in the town, had been asked by the Respondent for his vote and interest ; that

Limited
authority to
canvass makes
Respondent
liable to that
limited extent.

afterwards he had canvassed his workmen for the Respondent, and had dismissed certain of them because they refused to vote for the Respondent; and it was submitted thereupon on the part of the Petitioner that the Respondent was liable for this act of Harrop.

Mr. Justice WILLES said :—" Asking a person in Harrop's position for his ' vote and interest ' might mean ' go round and canvass your workmen for me,' though that might not be the case with ordinary voters. But if it did mean that, it would not be an authority to canvass beyond the scope of the workmen in his employ. With respect to anything done as to voters other than these workmen, it might very well be said there was no agency but within the scope of the authority to act as agent there was quite as strong a responsibility on the part of the candidate as there would be in the case of a general authority to canvass."

Petitioner not
obliged to be
called as a
witness when
there is a
recriminatory
charge, but if
there is any
ground for sus-
picion, judge is
bound to call
him himself.

Parliamentary
Elections Act,
1868, s. 32.

The Petitioner himself not having been called as a witness in support of his case,

Serjeant *Parry*, in opening the Respondent's case, said that as a recriminatory charge was made against the Petitioner, he had been very much taken by surprise by the fact that he had not been called as a witness. This was almost the invariable practice. He apprehended his Lordship would have to make a report to the Speaker as to whether the Petitioner was guilty of any and what offences.

Mr. Justice WILLES said he was bound to inquire if there was reasonable ground for supposing or even suspecting that the Petitioner was guilty of anything, but for that purpose he was bound to act upon section 32 of the Parliamentary Elections Act, 1868 which gave him the authority to examine witnesses himself: but he was not bound to inquire into this when there was, as here, no ground of suspicion. It was not intended that the Judge should hold, so to speak, an investigation, but only follow up any clue which the evidence of either party might present, especially if he saw anything like collusion.

Gossip no
evidence,

A witness was asked in cross-examination, Did you not say you were not a voter?—A. No; I did not say so.

In re-examination he was asked, Did anybody else say you were not a voter?—*A.* Yes; William Raines said so. except on a scrutiny.
(1) 30.

Serjeant *Parry*, for the Respondent, objected to what Raines said, as not being evidence.

Mr. Justice WILLES said:—" Mere gossip is no evidence, except self-disabling evidence on a scrutiny."

A person who had not been subpoenaed as a witness having given evidence, at the close of his examination asked whether he could claim his expenses. Expenses of witness not subpoenaed.
(2) 70.

Mr. Justice WILLES said:—" I think as this witness was not subpoenaed, I ought before the examination of the witnesses to have been asked that the witness should be examined under section 32 of the Parliamentary Elections Act, 1868, which authorises a Judge either to send for a witness not in Court, or to direct a witness not in Court to be examined. This witness was not subpoenaed, and I think the section authorises me to order the expenses to be paid. The officer suggests that I should direct them to be paid by the Petitioner; but inasmuch as this witness was adverse to the Petitioner, if I gave him a remedy against the Petitioner, it might cost him a great deal more than his expenses. I had better, therefore, act on the equity of the section, and direct that he should be considered as a witness examined by the Court; then his expenses, whatever they are to which he is legally entitled, will be paid. If any other witness desires to take the same point about his expenses, he must do so before he is sworn."

It was proved (as part of the recriminatory case) that the Petitioner had sent a cheque for £10 as a subscription to a dissenting congregation almost at the same time as he issued his address as a candidate. Subscriptions not a corrupt practice.
(3) 286.

Mr. Justice WILLES:—" I wish I could be spared the theological part of the case, unless it is a very clear case."

Mr. *Cole*:—" If your Lordship thinks nothing of it, I will not press it."

Mr. Justice WILLES:—" No; I do not say I think nothing of it. I have myself often observed that people who mean to become candidates often subscribe to things they would otherwise not

have subscribed to; but I think that is a step off corrupt practices; it is charity stimulated by gratitude or hope of favours to come.

At the close of the case,

Treating
evidence of
intention.
(4) 110.

Mr. Justice WILLES said he would take that opportunity of observing that he did not wish it to be supposed (as had been supposed by some people from some expressions of his in another case) that treating by a single glass of beer would not be treating if it were really given to induce a man to vote or not to vote. All he had ever said was that that was not sufficient to bring his mind to the conclusion that the intention existed to influence a man's vote by so small a quantity of liquor.

Mr. Justice WILLES in his judgment declared the election void on the ground of intimidation, within 17 & 18 Vict. c. 102, s. 5.

Threat of dis-
missal of
workmen in-
timidation
under 17 & 18
Vict. c. 102,
s. 5.

He said that the facts as to the case of Mr. Joseph Harrop were as follows:—

“Mr. Harrop was a manufacturer and a large employer of workmen in the borough. The Petitioner was his rival in trade, against whom he entertained an angry feeling. Almost as soon as it was found probable or possible that the Petitioner was likely to come forward as a candidate for the borough, Harrop began interrogating his men as to whom they were likely to vote for. The men, or some of them, told him they did not intend to vote at all. He commended their resolution, and extracted a promise from them that they would adhere to it. Shortly afterwards he consented to become a member of the Respondent's Committee, and he then commenced canvassing for the Respondent those same men from whom, just before, he had extracted a promise not to vote at all. Certain men in his employ at the latter end of October declined to vote otherwise than for the Petitioner, having promised him so to do. When this came to Mr. Harrop's knowledge he brought these men before him and said what amounted in substance to this: ‘I have determined that no man shall remain in my employment who votes for Laverton; if you vote for Laverton you shall have no further employment from me.’ In the case of two men he asked affirmatively, ‘Will you vote for

Phipps ?' These men did in fact all leave his employment before the election, but it was not proved that they were actually discharged on account of their political opinions, and it was suggested by Mr. Harrop that some of them were discharged on account of their untruthfulness in voting at all after promising not to vote. It was also suggested that some of them left voluntarily. Though in one sense they may have gone voluntarily, they did not go willingly, any more than a man acts willingly when he voluntarily takes to a small boat in the middle of the ocean when his ship is on fire. There was a compulsion upon these men which they could not resist, and I am satisfied that all these men would have remained in the employment of Harrop but for their having promised to vote for the Petitioner, or if they had changed their minds as Harrop willed and had voted for the Respondent. Two questions arise on this state of facts.

"The first is, Does this conduct of Harrop amount to undue influence or intimidation within the 17th & 18th Vict. c. 102, s. 5 ?

"I cannot take this conduct of Harrop with respect to any one of these individual men as standing by itself. I cannot look at his conduct as being the single act of an angry person dealing with one voter who was under his influence. I must look at the whole of it together. If he had threatened the lives or limbs of the men, there could be no doubt that that would have been within the section ; but it is not mere poetry to say,

' You take my life

When you do take the means whereby I live.'

A man who is sent out to live upon the charity of his fellow workmen, or to go to the workhouse with his family, unless he does a particular thing, is intimidated ; but is that an intimidation within the section ? The 5th section forbids appealing to a man's fears by means of violence or intimidation. The Act says, ' Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss.' Upon these words a question might arise whether they are not to be understood in a direct sense, and whether you

must not only show damage, but damage the result of some injury for which an action might be maintained at law, and it might be pleaded as to these words that the damage resulting from being dismissed from an employment when the master had a legal right to dismiss, was not a damage arising within that description, and therefore not within the statute. I need not, however, express my opinion upon that, because the following words are large enough to include every sort of intimidation, every sort of conduct which would operate upon the mind of another, and terrify or alarm him into doing what the person misconducting himself willed, against his own free will, because the words are, 'or in any other manner practice intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting. The 17 & 18 Vict. c. 102, s. 2, (2) among other things, makes the promising 'to procure,' or endeavouring 'to procure any office place, or employment to or for any voter,' bribery. And reading the 5th section by the light thrown upon it by the 2nd, I can have no doubt that that which it would be bribery to promise the enjoyment of, is (in this case at least, and with reference to these circumstances) intimidation to threaten the deprivation of.

"The second question is, What is the effect upon the election of the violation by an agent of the Respondent of the provisions of the 5th section, by intimidation ?

"Here again I must observe that I do not treat this as a single case of intimidation ; I must treat it as part of a system which continued throughout the time that Harrop was an agent for the Respondent for the purpose of canvassing. The question as to the effect upon the election depends first of all upon the common law of Parliament, and secondly, upon the construction of the 17th & 18th Vict. c. 102, s. 36. By the common law of Parliament a single bribe given by an agent at an election had the effect of avoiding that election. It does not fix the candidate with penal consequences, it simply says that for the public good in order that agents may be deterred from resorting to undue means for the purpose of procuring the election of the candidates employing them, an election in which an agent has so misconducted himself shall be void, not to punish the candidate, though it indirectly

so operates, but to protect the public and to prevent the like practices, if possible, for the future.

"But it has been said on behalf of the Respondent, First, that there is a distinction between bribery on the one hand, and undue influence and treating on the other, and that this distinction exists in two particulars especially.

"(1) That a single act of undue influence ought not to prevail, because it is hard that the Respondent should be liable for his agent's conduct. But the law deals in this instance with the validity of the election, and not with the penalties imposed upon the candidate.

"(2) That a single act of undue influence by an agent ought not to defeat the election. But I find no such limitation in 17 & 18 Vict. c. 102, s. 36. I find that the candidate and his agents are put upon the same footing. To take an illustration. If a candidate, who is an employer of labour, were to inform all persons in his employ either that he would discharge any man who did not vote for him, or that he would discharge any man who voted for the other candidate, inasmuch as he was his personal enemy, that would avoid the election, and it is inevitable that it must do so equally if the undue influence be exercised by an agent, because section 36 says 'or his agents.'

"Secondly, it has been said that it is left in the discretion of the judge to say how much undue influence shall or shall not affect an election. But that is impossible. By the Parliamentary Elections Act, 1868, s. 11, I have no discretion one way or the other. I must pronounce for the truth as I believe it upon the facts, and for the law as I best know it upon questions of law.

"Thirdly, it has been said that to put the construction upon 17 & 18 Vict. c. 102, s. 36, that this election which is gone by is avoided, would be begging the question, because section 36 means that if any candidate at an election . . . shall be declared guilty . . . of bribery, &c., at such election, such candidate shall *in futuro* be incapable of being elected or sitting in Parliament . . . during the Parliament then in existence. The argument, no doubt, is a plausible one, but the answer to it is this. It is in truth a begging of the question to say that it is a begging of the question. Because the question here is not merely whether the Respondent

shall *in futuro* be capable of being elected, but whether he shall *in futuro* be capable of sitting in Parliament in respect of what took place at the election which has gone by. Therefore the inquiry must be in respect of what took place at the election which has gone by, and to say that it is begging the question therefore, is only another form of that mode of begging the question which is forbidden by the legal maxim, *Non debet adduci exceptio ejusdem rei cujus petitur dissolutio*. It is quite obvious, therefore, that the begging of the question would be in not treating that section as applicable to the election in question.

“Fourthly, it is said that the influence to defeat the election must be influence operating as a kind of terror, and that that did not exist here. But there was terror, whether it be more or less, still a terror amounting to intimidation at Harrop’s factory for some time before the election, and a strong feeling that men would be dealt with differently according as they voted one way or the other, which feeling, produced by illegitimate means, is to be prevented, and the persons who are likely to feel it are to be protected by law.

“Fifthly, it was said that although Harrop was an agent of the Respondent, and did intimidate under 17 & 18 Vict. c. 102, s. 5, he did not intimidate as an agent, and that therefore his principal is not bound; and it was said, by way of illustration of that view that although a master is answerable for a negligent act of his servant in the course of his employment, he is not answerable for his wilful and spiteful act for his own purpose, not in the course of his employment; and that might be carried further, because a master would not be liable to some person run over by his carriage driven by his coachman upon some errand of his own entirely out of the scope of the employment of the master. There can be no doubt of that; but I might put, on the other hand, a variety of cases in which a principal is held liable, even civilly, for an act of his agent, which he never intended, and at which he is exceedingly displeased; the case of a bank held liable for the fraud of a manager or clerk, the case of a person who employs a man to navigate his boat for hire, held liable for the infringement of a ferry by the boatman without his authority and against his will; and a case which occurred in London in the rivalry between

the omnibuses, where the proprietor of an omnibus was held liable for the wilful act of his coachman in cutting in before another omnibus and injuring the vehicle and the horses, and I think one of the passengers, for the purpose of getting a fare, having in his mind at the time the compound motive of effecting his own spiteful desire, and at the same time of getting before the other omnibus to get a fare for his master. This case was very much considered in the Exchequer Chamber, and was held by a large majority of the judges to be a case of liability ; or I might put even the more apposite case of a man employing another to steer and assist in the management of his vessel in a race, where by the act of one of the crew wholly unauthorised by the employer, a foul took place in wrong of a rival, and the employer's vessel wins ; in such a case, even if it were proved to demonstration that notwithstanding the foul, the race would have been won by the vessel on board of which the misconduct took place, it would surprise one if, by any rule either of honour or of law, the prize was given to the vessel which was in fault ; no innocence of the employer could have any effect upon his loss.

"Here, if Harrop did what he did out of hostility to the Petitioner, that certainly cannot add merit to his act ; the question is, whether the act was done with the object of assisting the Respondent in the course of his canvass. I have no doubt that was the object, though it was to serve him at the expense of the Petitioner ; the object was to get the Respondent returned, though the motive was to spite the Petitioner, and to prevent him from being elected."

As to the agency of Harrop, he said :—"It was proved that Harrop was a large employer of labour, and was desirous of canvassing his own workmen for the Respondent. The Respondent not only desired Harrop to canvass for him, but he also (whether expressly or impliedly, whether by words or actions, it is immaterial) conveyed that desire to him. Accordingly Harrop did canvass for the Respondent, and in so doing I come to the conclusion that he acted as his agent. For an agent to bind another it is not necessary that there should be any payment, it is only necessary that the act done by the agent upon which the question arises whether it is to bind the principal should be an act done by the procurement of the principal."

Canvassing by procurement of respondent, no matter how, creates agency.

**Definition of
canvassing.**

As to what canvassing is, he said :—"Canvassing may be either by asking a man to vote for the candidate for whom you are canvassing, or by begging him not to go to the poll, but to remain neutral, and not to vote for the adversary. No distinction can be drawn except in the amount of favour between voting for a man and abstaining from voting for his adversary. That such is the law appears from the 17 & 18 Vict. c. 102, which places on the same footing inducing a man to vote at an election and inducing a man to abstain from voting."

Costs.

"I have already intimated that I do not propose to make an order (I am not bound to state any reasons why I make no order as to the costs, and it is quite obvious why I do make no order). The scrutiny which was claimed has been abandoned; personal attacks were made upon Mr. Phipps which in the result have entirely failed; and the recriminatory case, though it did not amount to proof to satisfy my mind to report against Mr. Laverton, was of so serious and weighty a character that I think it was quite right to bring it before the court."

CASE X.

BOROUGH OF WALLINGFORD.

BEFORE MR. JUSTICE BLACKBURN, FEBRUARY 2, 1869.

Petitioner: Sir C. W. Dilke, Bart.

Respondent: Mr. Stanley Vickers.

Counsel for Petitioner: Mr. Merewether, Mr. Poland, Mr. Carswell.

Agents: Messrs. Fladgate, Clarke, and Finch.

Counsel for Respondent: Mr. Serjeant Ballantine, Mr. Francis,
Mr. Montague Williams.

Agents: Messrs. Child and Son.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It appeared that several voters, who lived some way off, were invited by an agent of the Respondent to come to his house, in order that he might convey them to the poll in his own carriage. They came accordingly the day before the election, and slept at his house that night. While they were there they were treated to drink and tobacco, but upon the evidence it was not shown that there was any corrupt intention in this treating.

An unsuccessful attempt was also made to prove treating at various public-houses.

In the course of the case,—

Serjeant *Ballantine* said he understood the Court had power to allow a commission to issue to examine a witness who was dan-

Examination
of witness

under a com-
mission.

(S) 353.

gerously ill ; he was informed he was not expected to live through the night.

Mr. Justice BLACKBURN ordered the witness to be examined *viva voce* before the registrar of the Court. Counsel would be at liberty to attend and ask what questions they liked, and a shorthand writer must also be present.

The registrar was first desired to see that the man was in a fit state to be examined without endangering his life, and after inquiry it was found that the witness was too ill to be examined at all.

Mr. Justice BLACKBURN in his judgment declared the Respondent duly elected.

Treating,
evidence of
intention.

Speaking of the facts which had been proved in support of the charge of treating, he said :—

“ This is one of the cases that I have had a great deal of trouble in considering. For, on the one hand, it is not one of the cases in which there could be no doubt that the effect would be to unseat the member, nor, on the other hand, is it one of the cases in which it is clear that the member is to retain his seat. It is one of the cases in which there is matter to be considered, and seriously to be considered, in order to say whether or no there was such an amount of corrupt treating as to avoid the election. As to the law, I quite agree that 17 & 18 Vict. c. 102, s. 23, does not affect the question of treating. It imposes a penalty wise enough for the purpose of checking the practice of giving meat or drink at elections, and it imposes it whether the person be a candidate or any one else, the intention of the legislature being that there should not be any such entertainment given on the polling day. The 4th section is that on which it turns. I cannot doubt that the intention of the legislature in construing the word ‘ corruptly ’ was to make it a question of intention, which must be ascertained, as all questions of intention must, by looking at the outward acts of the parties and seeing the degrees and extent, and then drawing the conclusion from the facts ; a conclusion which may be, to a certain extent, doubtful when we are considering what were the intentions. I think that what the legislature means by the word ‘ corruptly ’ for the pu

pose of influencing a vote, is this : that whenever a candidate is, either by himself or by his agents, in any way accessory to providing meat, drink, or entertainment for the purpose of being elected, with an intention to produce an effect upon the election, that amounts to corrupt treating. Whenever also the intention is by such means to gain popularity and thereby to affect the election, or if it be that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink whenever they can get it for nothing, they will become unpopular, and they therefore provide it in order to affect the election—when there is an intention in the mind either of the candidate or his agent to produce that effect, then I think that it is corrupt treating. But everything is involved in the question of intention, and it becomes important to see what is the amount of the treating. The statute does not say or mean that it shall depend upon the amount of drink. The smallest quantity given with the intention will avoid the election. But when we are considering, as a matter of fact, the evidence, to see whether a sign of that intention does exist, we must, as a matter of common sense, see on what scale and to what extent it was done. No one would think it reasonable to draw the conclusion from the mere giving of a thimbleful of drink (to use a strong expression), that it was done with any intent to influence the election so as to bring it within the statute. It is equally certain that in the case of a person giving a large number of thimblefuls one would draw the conclusion that there was such an intention. But it must always be a question more or less of evidence, and the inference which the Court draws from the facts must to some extent depend upon the peculiar views of the minds which have to draw the inference, and there must, therefore, always be a certain measure of doubt in that respect. But I take it there is no doubt that the point to be considered is, Was it given with an intent to influence the election ?

“Now the facts of this case are clear :

Facts of the
case.

“Seven voters, no doubt to some extent under the influence of Mr. Deacon, the Respondent's agent, were to go to poll the next morning. Deacon had requested them to come to his house at half-past seven, and he would carry them there in his carriage. I

presume Deacon's object in doing this was to insure their pollin early. Then it would appear that without Mr. Deacon havin directly asked them, Mr. Deacon's servant consented to thei sitting up all night in the kitchen, and Mrs. Deacon, whe they were there, gave them some drink and tobacco. Now there can be no doubt that this was given to these seven me because they were about to vote for the Respondent at the elec tion. If, therefore, Mr. Merewether was right in his propositio of law which he laid down, that anything of that sort done o account of the election would avoid the election, that would avoi the election. But I think we must see the degree and manner i which it was done to see that it was really done with a corrup intention, which I understand to mean an intention to produc that result which the legislature intended to forbid; and I cannot upon that draw the conclusion that such entertainment given t these seven men in this way was an act of treating within th meaning of the statute, though of course it was evidence to b taken into consideration with other things in order to see whethe there was corrupt treating."

Imprudent for
candidate to
have scores
at public-
houses.

With regard to scores at public-houses, he said:—

"I cannot lay it down, as a general rule, that to have a score a a public-house amounts to treating. As a matter of prudence, should strongly advise candidates to have no score at all; let them pay their paid agents, and let the paid agents find themselves let them pay nothing at all to supply refreshments for committee men, and those who act gratuitously. The candidate will thu avoid any score at a public-house, and will not be in any peril o having treating put upon him."

Costa.
(3) 242.

A witness, George Wilson, not having given the evidence i support of the petition which he was expected to have given,

Mr. Justice BLACKBURN said the Petitioners ought to hav better ascertained previously what the witness could prove, an that for that reason he should not be disposed to allow his cost in the event of the petition succeeding.

In the course of Mr. Merewether's reply,

Mr. Justice BLACKBURN said, in consequence of the Petitioner's attorney not having properly prepared the case beforehand, ther

had been much waste of time, and he should not, therefore, feel disposed in any case to allow the Petitioner's costs; if the Petitioner suffered owing to the neglect of the attorney, he must take his own remedy.

Ultimately, as the petition was unsuccessful, costs followed the event in the usual way.

CASE XI.
BOROUGH OF CHELTENHAM.

BEFORE MR. BARON MARTIN, FEBRUARY 8, 1869.

Petitioner: Mr. J. A. Gardner.

Respondent: Mr. Samuelson.

Counsel for Petitioner: Mr. Huddleston, Q.C., Mr. Edward Clarke.

Agent: Mr. Ridge.

Counsel for Respondent: Mr. Serjeant Sargood, Hon. E. Chandos Leigh,
Mr. Fallon.

Agent: Mr. Chesshyre.

THE petition contained, amongst others, an allegation that the Respondent was guilty of undue influence under 17 & 18 Vic c. 102, s. 5; but it did not contain any allegation as to the election being void at common law on account of general intimidation, and it did not pray the seat.

It was found that a prize-fighter had been employed on behalf of the Respondent to intimidate voters, and some evidence of general violence was given, but it failed to establish such a case of general rioting as could avoid the election at common law.

It was also proved that some person paid the rates of a number of voters, to enable them to be registered; but it did not appear that the Respondent had had anything to do with this payment or that it was made with the intention of influencing the votes of the persons so registered.

In the course of the case,

Mr. *Huddleston*, for the Petitioner (at the beginning of the second day of the hearing of the case), asked permission to add two other names to the list of bribed persons, already handed in.

Addition of cases of bribery on second day of trial.
(2) 1.

Mr. Baron MARTIN.—I shall require a very strong affidavit in that case, and I shall only take it on summons.

Mr. *Huddleston* inquired in what form the affidavit should be.

Mr. Baron MARTIN.—When it was discovered—when it was first known. I shall require a very strong affidavit on the second day of the trial.

A witness in examination in chief was shown a paper, and was asked :—

Witness's mark, C. L. P. Act, 1854, s. 22, 24.
(2) 148.

Q. Did you make your mark to this paper? A. I do not know.

Q. Is that your mark? A. I could not swear.

Mr. Baron MARTIN.—Before you can ask whether it is his mark, you must go further. You must act upon the Common Law Procedure Act, 1854, s. 22. You must take the witness through the matters that are required to be proved by that section; and you must also satisfy me that he is an adverse witness.

Mr. *Huddleston* cited s. 24.

Mr. Baron MARTIN.—But you are not cross-examining him—he is your witness; that makes all the difference in the world.

Mr. *Huddleston*, for the Petitioner, before proceeding with the evidence in support of the charge of corrupt payment of rates, called the attention of the Court to the wording of the 49th section of the Representation of the People Act, 1867. He pointed out that the word “corruptly” was used only where the rate was paid on behalf of a ratepayer, to enable him to be registered as a voter, but was not used when the rate was paid on behalf of a person already a voter.

Corrupt payment of rates. Representation of the People Act, 1867, s. 49.

Mr. Baron MARTIN :—Paying a rate on behalf of a voter, to induce him to vote, would be the same thing as paying the money into the hands of a voter; it would be direct bribery.

Subsequently in his judgment, he said :—

“It has been proved that some person, or persons, did pay the

rates of a number of voters ; and if it had been also proved that the Respondent, or any person for whom he was responsible, had paid those rates, the Respondent would then have been guilty of bribery under 30 and 31 Vict. c. 102, s. 49. But that has not been proved. I may further say that, even if there had been evidence of who paid the rates, I should expect that further evidence would be necessary to bring it within this section. The money was obviously paid to enable the voters to be registered. But in order to make the payment of a rate for the purpose of enabling voters to be registered affect the election, you must prove that it was done corruptly ; that it was done thereby to induce them to vote for that person on whose behalf the payment was made."

Mr. Baron MARTIN, in his judgment, declared the Respondent duly elected.

What may be given in evidence under 17 & 18 Vict. c. 102, s. 5.

With regard to the allegation in the petition, that the Respondent had been guilty of undue influence within the meaning of 17 & 18 Vict. c. 102, s. 5, he said :—

" My impression is, that evidence given to show that the election is void at common law, by reason of its having been carried by force or intimidation, whereby the freedom of election has been violated, and persons have been prevented from freely exercising their franchise, is not within this 5th section, which was directed, like the bribery and treating section, to the unduly influencing of individual voters, not to general rioting or violence ; and if it were necessary for me to decide the case with reference to this 5th section alone, I should reserve it for the opinion of the Court of Common Pleas.

" In the event of its being thought fit to rely on evidence of this sort for the purpose of affecting an election, another paragraph should be put into the petition, and the objection to the election should be ' general violence being used towards voters.' "

Stronger evidence necessary of mere offer of bribe.

With regard to the evidence necessary to establish a case of a mere offer of a bribe, he said :—

" Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself, or where the alleged bribing is an offer of employment within the meaning of 17 & 18 Vict.

c. 102, s. 2 (2), it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence ; but one person understands what is said by another differently from what he intends it."

Costs will follow the event.

Costs.

CASE XII.

BOROUGH OF STALEYBRIDGE.

BEFORE MR. JUSTICE BLACKBURN, FEBRUARY 13, 1869.

Petitioners: James Ogden, John Woolley, Abel Buckley.

Respondent: James Sidebottom.

Counsel for the Petitioners: Mr. Pope, Mr. Edwards.

Agents: Messrs. Reed, Phelps, and Sedgwick.

Counsel for the Respondent: Mr. Higgins, Q.C., Mr. Leresche.

Agents: Messrs. Baxter, Rose, and Norton.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

Evidence was given to prove that corrupt treating had taken place at two public-houses, the Star, and the Albion; but the witnesses called for the Respondent proved that the evidence on which the Petitioners relied was not trustworthy. Evidence was also given to prove that two men, Evans and Gilbert, had been bribed by a promise of their day's wages, but the agency of the person who bribed them was not proved.

In the course of the case,

It was proved that a voter, Gilbert, was promised his day's wages by two men, Thornley and Vaughan, if he would vote for the Respondent. It was proved that Thornley was a publican, and one of the rooms in his house was engaged and used by a committee not selected by the Respondent, but consisting of *bond*

Promise of
wages bribery,
17 & 18 Vict.
c. 102, s. 13.

Agency—un-
authorised act
of agent of

vide volunteers, chosen by the voters of the district as persons in whom they had confidence to be the head of their own department and to act together. At the request of one of these committee-men, Thornley went to fetch Gilbert to vote, and took with him one Vaughan, because Vaughan knew Gilbert. They were not authorised by the committee-man who sent them to promise Gilbert anything for his vote, but they did in fact promise him his day's wages.

volunteer committee does not affect Respondent.

Mr. *Leresche*, for the Respondent, asked Mr. Justice Blackburn whether he should rule that the promising a day's wages, supposing it were proved, was a corrupt act within the meaning of the statute.

Mr. Justice BLACKBURN said that he should rule that it was so within the meaning of the 17 & 18 Vict. c. 102, s. 1 ;

And in his judgment said as to this :—

"There can be no doubt that a promise or offer to cause a workman or other person to be no loser by his coming to vote (for instance, that if he will come and vote for a particular person he shall not lose his day's work, that he shall be paid his day's wages for the holiday whilst he votes for such person, instead of having his day's wages as he would if he stayed away from voting and did full work) comes within the meaning of the Act, and is an act of bribery and corruption. Thornley and Vaughan distinctly offered and promised two voters that they should have their day's wages paid them if they would come and vote. That amounted to an act of bribery on the part of those who accepted it, and on the part of those who offered it."

As to the general rule of law relating to agency and its application to the case of Thornley and Vaughan, and as to the effect of their acts upon the Respondent,

Mr. Justice BLACKBURN, in his judgment, said :—

"The Parliamentary practice, beginning from early times, always was that a member was not merely to lose his seat on account of bribery committed by himself personally, or which he personally did, but that he also was to lose it when he was guilty of bribery by his agents. The reason of that was obvious enough. Candidates put forward agents to act for them, and if it were permitted that these agents should play foul and that the candi-

date should have all the benefit of this foul play without being responsible for it in the way of losing his seat if the foul play was committed by the agents without the candidate having precisely known it, great mischief would arise. Then again, one cannot shut one's eyes to the fact that to a great extent where corrupt practices were committed, they were committed by persons who carefully abstained from letting the member know precisely what they were going to do. They were in such a position that they could act actively and spend money, and yet the candidate might be carefully kept in ignorance that they were spending money but afterwards, when it was all over and when it was too late to petition the House of Commons, they would say to the sitting member, 'Of course I never let you know that I was spending this money, but you have had all the benefit of it, and consequently you are bound in honour to pay me for the expense I have incurred.' In that way there was a great deal of corruption. I do not doubt that these two principal grounds led to what was undoubtedly the practice of election committees, that it was not sufficient to say that the member himself was not guilty of corrupt practices, or did not know of them, but that his seat was lost if he was guilty by his agent. And that law which was recognised by what one may almost call the common law of Parliament is recognised, in my opinion, by the Legislature in the 17 & 18 Vict. c. 10 s. 36, by which it is enacted that if any candidate at an election for any county, city, or borough, shall be declared by any election committee (it is now the election judge) guilty by himself or by agents of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city or borough, during the Parliament then in existence. That section clearly indicates that the Legislature sanctioned the decisions of the House of Commons in which a member guilty by his agents of treating, or any other corrupt practice, was incapable of sitting, and making a distinction between his being guilty by his agents only, and being guilty personally. And the more recent Act, the Parliamentary Elections Act, 1868, where it puts a more severe punishment upon a person personally guilty, clearly shows that there is a distinction whether the man is personally guilty or whether he is guilty by

his agents. Without any personal guilt, if he has by his agents been guilty of corruption, then the seat is vacated and the member can no longer sit for that place during that Parliament.

"Now comes the question, which is one of very great difficulty indeed, What is the definition of agency? What is the relation between the sitting Member and the person guilty of a corrupt practice that shall constitute agency, so as to make the sitting Member responsible for it? On that the decisions of the Election Committees, so far as I have been able to look at them, do not assist me at all, because that tribunal, from the way in which it was constituted, did not give reasons for any of those decisions.

"I have already, in the Bewdley case,* had occasion to decide this much. There it appeared that the sitting member had put a sum of money into the hands of his agent, and that he exercised no supervision over the way in which that agent was spending that money; that he had given him directions, and I thought really intended, that none of that money should be improperly spent; but that he had accredited and trusted his agent, and left him the power of spending the money, and I came to the conclusion upon that, that there was such an agency established as that the sitting member was responsible to the fullest extent, not only for what that agent might do, but for what all the people whom that agent employed might do: in short, making that agent, as far as that matter was concerned, himself, and being responsible for his acts. I see no reason to doubt at all that that is perfectly correct.

"Now, we come further than this. Of course here it clearly is not the case that these men who went and asked the voters to come and vote were agents to that extent. But this much is clear, that the mere act of taking the committee-rooms amounts to evidence that leaves me no doubt at all about this, that the sitting member and the sitting member's people did request the volunteer committees (as I may call them) there to bring up voters when they could; and consequently I think that there was this much, that the persons who, joining these volunteer committees, went and fetched voters, were in one sense employed by the sitting member to bring the voters up. It is upon that, which

* Vide, ante, p. 18.

certainly was the fact here, that Mr. Pope rested his argument upon the case yesterday. Mr. Pope laid it down as a definite proposition of law, that wherever a sitting member or his agents, for whom he was responsible, had employed a person to obtain a vote, though they meant him to obtain it honestly, yet if he did that corruptly which they meant him to do uncorruptly, they must take the consequences. To a very considerable extent I am inclined to agree to that proposition. In the Windsor case* Mr. Justice Willes, without deciding anything in particular, stated as a general proposition that a person employed by the candidate to canvass and get a vote was an agent for whom he must be to that extent responsible. As a general proposition, that would go a great way towards saying who is an agent, but I don't think we can take it as an absolute hard and fast rule on which we can say that wherever a case of corruption has been brought home to a person who was within this limit, the seat should be vacated. The effect of that would be to say that wherever there were volunteers who were acting at all, and whose voluntary acting was not repudiated by the candidate or his agents—wherever, in fact, a person came forward and said, 'I will act for you and endeavour to assist you,' and the candidate or his agent said, 'I am very much obliged to you, sir,'—any corrupt or improper act done by that volunteer, although unconnected with the member, would render the election void. To lay down such hard and fast rules as that would at times work great injustice. At present I cannot go further than to say that each case must be considered upon the whole facts taken together, and it must be determined in that way whether the relation between the person guilty of the corrupt practice and the member was such as to make the latter fairly responsible for it.

“In bringing that into consideration, the Judge who has to decide the case ought to bear in mind the reason of the rule already explained, viz., that the candidate must be responsible for his agent's unauthorised acts, if the agent was one who was put forward by him so that he might have the benefit of his foul play, or was one who was authorised by him to act in a way which

* Vide, ante, p. 3.

would give him, by receiving money which he might dispose of, uncontrolled agency. Bearing these matters in mind, I think the Judge must say in each case, what was the relation made out between the parties.

"I do not think it necessary that there should be any paid agency to make a candidate responsible for what the person has done. And I think that many of these volunteer agents who were heads of committees might or might not be so far connected with the Respondent that he would be responsible for them. But, upon the evidence in this case, I am satisfied that these heads of the committee-rooms were not parties offering this payment of wages. I do not think there was any sanction or consent given by anybody to the offer of Thornley and Vaughan. I have no doubt that both Thornley and Vaughan thought that Gilbert's claim to be paid his day's wages was so very equitable, according to their view, that probably the wages would be paid by the Respondent, and that being so, I think that they volunteered the statement, and that they carried it further, and positively assured Gilbert that he would be paid.

"But then comes the question, were Thornley and Vaughan so connected with the Respondent as to be agents for whose corrupt acts the Respondent would be responsible? As I have already intimated, it is necessary to consider the reasons and objects of the rule, and to take the case as it stands altogether. If I were to lay down the rule that such an act as this, an improper act of such persons, would avoid the election, I do not see that any one could be safe in ever standing at any election, without providing that every canvasser and every person engaged in the election should be his own dependent, over whom he would have complete control. I think there is a great risk in all cases that corruption would be concealed and hidden under things of that sort. Wherever it does appear that there is any ground to suspect that there is any corruption of that sort, I need not say that it would be a strong case; and whenever it appears that the things are numerously done, it would go very far to show that the agents did come within that principle upon which I think the law is founded, viz., that they were persons the benefit of whose foul play the member was to get, and therefore it would be right that he should forfeit his seat in

consequence. But in such a case as this, where I am convinced that they were real *bond fide* volunteers, voters acting for themselves, not selected by the member, or chosen by him at all, but really *bond fide*, in a business-like manner, the voters of the district choosing sober and respectable men, in whom they had confidence, to be the head of their own department, and acting together, a messenger who was sent by one of them is not so directly connected with the candidate, or any of his recognised agents, as to make him responsible for his misconduct in offering a bribe."

Upon one Cassidy being called as a witness,

Mr. *Leresche*, for the Respondent, objected to his being called to prove any specific case, on the ground that his name was not down in the particulars.

Mr. *Pope*, for the Petitioners, said that Mr. Baron Martin, at Bradford,* had decided not to impose any such restriction, but had allowed the cases to be as wide as possible.

Mr. Justice BLACKBURN said that all through these cases he had gone upon this principle, namely, that he should not allow any inquiry to be stifled as not being in the particulars; but at the same time he could not allow any Respondent to be taken by surprise without having fair warning. If, therefore, the Petitioners relied upon this evidence, and had not given notice of it, they must apply to amend the particulars, and give the other side reasonable time to meet the case.

Mr. Justice BLACKBURN, in his judgment, declared the Respondent duly elected.

Speaking of the evidence which had been given of intimidation, and intimating that it had failed to establish a case, he said:—

"In order to avoid an election on the ground of intimidation and undue influence, either it must be shown that the rioting or violence was instigated by the member or his agents for whom he is responsible, or it must be shown that it was to such an extent as to prevent the election being an entirely free election."

As to treating, he said, after citing 17 & 18 Vict. c. 102, s. 4:—

* Vide, ante, p. 38.

Inquiry not to be stifled through insufficient particulars, but Respondent not to be taken by surprise.

(1) 238.

What intimidation avoids an election.

"That is the definition that the act gives, and on that definition I think there can be little doubt that the whole is governed by the word 'corruptly,' which means with the object and intention of doing that which the Act of Parliament intended not to be done for the object and purpose of influencing the election by the giving of meat and drink. The question whether or no there is 'corrupt' giving of meat and drink must, like every other question of intention, depend upon what was done, and, to a great extent, the extent to which it was done, the manner and way. And therefore it is a question which must always be more or less a question of fact."

Treating, to unseat, must be corrupt, which is a question of intention.

Commenting upon the evidence of treating which had been given by the Petitioners, he said:—

"The effect of the story told by three of the Petitioners' witnesses was, that they went to the Star Inn; that they were to be kept out of the way of the other side; and that while they were there, one Rigby was brought there; that Rigby was taken upstairs into the committee or club-room, where business was going on; that he was introduced by one Higginbottom as being a Liberal Conservative or a Liberal, whom they were to keep from the other side; and in order to induce him to keep there they proceeded to make a mock meeting, at which they put him in the chair, and gave him drink, made him make a speech, and in short gave him drink to such an extent that he was taken and sent in a cab to the Albion; that Charles Johnson, the younger, who was the paid agent of the Respondent, was present at the time when that took place; that he approved of it, and told them to give him liquors and make him drink; that he would send a cab for him to take him away to the Albion, where they would take care of him and treat him; that at the Albion one Bates, the head chairman of the Respondent's committee, saw him; and when he had seen him, Bates came out, and at the door of the inn made a speech to what were called roughs, telling them that they were to bring in votes wherever they could get them anyhow, to strike the cabs, to knock the cab horses in the legs, and knock down the cab horses if they could not otherwise bring them in, and to bring them in anyhow; that there they were to be; that Rigby was there, and Rigby was made further drunk; and that two Irishmen

What, if proved, would be a case of treating.

who were not named, but were described, were brought in & made completely drunk, and put aside under the table ; that Ba came in and must have seen them, and that they were pointed to Charles Johnson as being two that were lying there, and that the red ticket that belonged to one of the Irishmen was shown in order to show that they had got an adversary whom, by giving drink there, they had prevented from voting. If anything like that were true, it would clearly be a case of treating."

As to costs, he said :—

Costs.

"There is no reason why this case should be taken out of the general rule. I must consequently make the Petitioners pay the costs."

CASE XIII.
BOROUGH OF TAMWORTH.

BEFORE MR. JUSTICE WILLES, FEBRUARY 9, 1869.

Petitioners: Messrs. Hill and Walton.

Respondents: Sir Robert Peel, Bart., and Sir Henry Bulwer, Bart.

Counsel for Petitioners: Mr. Serjeant Ballantine ; Mr. Henry James ; Mr. Waddy ; Mr. Wolferstan.

Agents: Messrs. Young, Maples and Co.

Counsel for Respondent Peel: Mr. Giffard, Q.C. ; Mr. Macnamara.

Agents: Messrs. Freshfield.

Counsel for Respondent Bulwer: Mr. Keane, Q.C. ; Mr. Charles Clark ; Mr. Lumley Smith.

Agent: Mr. Keane.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

Evidence was given that 130 men, some of whom were voters, had been employed on the polling-day and the day previous at 5s. a day, but it was not shown, first, that the employment of them was colourable ; or secondly, that they were employed by the sanction of either of the candidates.

Some evidence was given both of general drunkenness and of corrupt treating ; suspicious circumstances were shown, but no case was established on either ground.

The evidence as to bribery was unimportant.

At the commencement of the case,

Name mis-
copied in par-
ticulars not to
be altered.

(1) 5.

Mr. *James*, for the Petitioners, stated that by some mis-copying the name of one Thomas Archer had been inserted in the list of bribed persons as John Archer. He asked the Court to permit the name to be altered, the Petitioners undertaking not to call him till the Respondents had had the same three days' notice as if his name had been correctly inserted in the list.

Mr. Justice WILLES said that he hardly felt disposed to allow the Petitioners to alter the name, there having been abundant time to prepare the particulars; but he presumed that probably the Respondents would not object to the case being brought forward.

Mr. *Macnamara*, for the Respondent Peel, said that he should prefer the case being gone into.

In the course of the case,

Person pro-
ducing cheques
when he must
be sworn.

(2) 376.

Upon the manager of a bank at Tamworth being asked by Mr. James (without having been previously sworn):—

Q. Do you produce certain cheques signed by Shaw, the agent of the two Respondents?—A. I do; how many do you want?

Q. As many as you have got.

Mr. Justice WILLES:—"You must proceed regularly. You ought to ask for each document separately."

Mr. *James*:—"We do not know the dates of the documents."

Mr. Justice WILLES:—"Then you must swear him."

He was then sworn.

Banker not
bound to pro-
duce Respon-
dents' agent's
private account
unless
relevant.

(3) 2.

Upon the manager of the Tamworth bank being asked, on behalf of the Petitioners, to produce the private account of Shaw, the agent of the Respondents, and objecting to do so,

Mr. Justice WILLES said:—"I do not think you are bound to produce Shaw's private account, except so far as to let me look at it. Then if it is material to the inquiry, I will say so, and in that case you will be bound to produce it, but not before. If there is any possible reason for its being produced, counsel shall see it."

Mr. Serjeant *Ballantine* submitted that he was entitled to call for the production of Mr. Shaw's private account with his bankers during the months of September, October, November, and December.

ber, and claimed a right to inspect it with a view of ascertaining whether there was anything in it which would assist the case of the Petitioners.

Mr. Justice WILLES said he must rule that this could not be done without laying some further foundation for such a course than at present existed, either by calling Mr. Shaw or otherwise.

Mr. *Giffard* then stated that Mr. Shaw had no objection to his private account being produced.

A chairman of one of the Respondent Peel's local committees having been called for the Respondents to rebut the charge of treating in connection with the committee of which he was chairman,

Mr. Justice WILLES said :—"I have not yet heard this witness asked two questions which I think ought to be asked of all witnesses of this class, viz., whether he supplied drink himself, or knows or suspects any one else to have supplied drink either to the persons who were at the committee meetings, or generally to persons who came and wished to partake of it."

Questions which should be put to chairman of committee called to rebut treating.

(4) 6.

Upon the Respondent Bulwer being called as a witness, he was asked by his own counsel :—Q. "We have heard that you sent down a sum of money to a Mr. Taylor about ten days ago to satisfy certain claims, the amount being what you thought the right sum?"—A. "May I be allowed to state——"

Respondents when called as witnesses may make any statement they like.

(4) 338.

(5) 114.

Q. "I am afraid you must answer my questions."

Mr. Justice WILLES :—"The sitting Members ought to be allowed to make any statements they think proper."

Upon witness being asked questions, with a view of proving that the Mayor was implicated in the corrupt treating which it was sought to establish,

Mayor should be made a respondent if there is intention to adduce evidence connecting him with corrupt practices.

(5) 81.

Mr. Justice WILLES said :—"The Mayor is no party to this petition."

Serjeant *Ballantine* (for the Petitioner) said :—"He is alleged to have been present during the treating."

Mr. Justice WILLES intimated that in his opinion the Mayor ought to have been made a party to the petition, if evidence was to be given to implicate him in any way. He would then have had an opportunity of defending himself.

Serjeant *Ballantine* said he should have no objection to call the Mayor as a witness.

Mr. Justice WILLES said:—"I will not call upon the Mayor, because I do not wish unnecessarily to put him in the position of a witness, as he is not charged in the petition."

Employment
of private
persons to
keep the peace
not illegal, but
dangerous.

Employment of
voters when
illegal.

Agency by
adoption.

What
amounts to
ratification.

It was proved that one Baraclough, an agent of the Respondent Bulwer, obtained leave of Shaw, an agent at that time of both the Respondents, to engage a few men, none of whom were to be voters, to help keep the peace on the polling-day. Baraclough greatly exceeded the authority thus given to him, and engaged as many as 130 men, twenty-nine of whom were voters, at ten shillings a head. After the election, Baraclough applied to one Carmichael to pay him on behalf of the Respondent Peel for these men, and thereupon the Respondent Peel, believing that some men had been actually employed in this way on his behalf, but without knowing any of the details, and without knowing that any voters had been employed, authorised Carmichael to pay them.

Serjeant *Ballantine*, for the Petitioners, contended, as regards the case against the Respondent Peel,—

First, that it was illegal to employ persons to assist in keeping the peace ;

Second, that it was illegal to employ voters at all ;

Third, that the Respondent Peel, by what he did, ratified the illegal act of Baraclough, and made him his agent by adoption.

Mr. Justice WILLES, in his judgment, said, as to the first point :—

"It is not illegal for private individuals to employ persons to keep the peace. It is a most dangerous practice, and one which ought rarely, if ever, to be resorted to. But although I say that it is not illegal, yet I feel bound to add that any one who presumes to appoint for himself a number of persons whom he calls private police is answerable, as their master, for the misconduct of any one of them."

As to the second point, that is, the employment of voters, a matter which more especially affected the case of the Respondent Bulwer, inasmuch as Baraclough was proved to be his agent, he said :—

"The law with respect to the employment of voters has been

sed in a variety of cases which have come before Election ittees, and as this is the first case in which I have had to upon such a question, I think it right to refer to some of oy name. In the Leicester case (1 Power, Rodwell & Dew, was laid down that the colorable employment of voters the pretence of giving them wages for services which were ndered, is bribery, and that the colorable employment of for the purpose of inducing or enticing them to vote for the ate who employs them, is bribery. On the same side of the n is the Oxford case (Wolferstan & Dew, 109), and the use (Wolferstan & Bristowe, 87). On the other hand there rious cases in which the Committees came to the con- that the employment of voters was not colorable, in some e the services, though not rendered, were expected by the ate or his agent to be rendered, and in others because the on to bribe was negatived by the circumstance that service ntemplated by the candidate or his agent, and that it was y reason of the misconduct of the voters employed that it ot rendered. The most remarkable of these cases is the idge case (Wolferstan & Dew, 23, 41), where Mr. Deasy (Mr. Baron Deasy) delivered a reasoned judgment. There is ie Lambeth case (Wolferstan & Dew, 129), where the Com- decided that the system of organised canvassing, which was to have existed at that election, accompanied by the pay- of the canvassers, was, under the circumstances, legitimate, payments were made to the voters who were employed in urse of the system. In the Preston case, too (Wolferstan owe, 76), the Committee declined to set aside the election ground that the system had been resorted to.

aring in mind that the Parliamentary Elections Act, 1868, . 26, directs the Judge to act upon the principles upon Election Committees have acted where he has no light from les which his own professional experience supplies him with, ases may be taken to throw light upon the employment of 130 men, so far as the number consisted of voters."

eeding to deal with the facts, and pointing out that the ple to be acted upon was represented by the question—"Is mployment of these 130 men a colorable device to cover

bribery? or is it to be referred to motives and springs of action other than an intention to procure votes?" he said:—

"The question to be inquired into here is why did Baraclough employ these 130 men? I believe that he employed them because he desired to gain popularity for himself, and because he desired to make a handle of their employment to gain favour for himself among the class to which the men belonged. I believe that he did it to make capital for himself, and that in doing so he acted unfaithfully to his employer. He did, in employing those men what was not to the advantage of his employer, or of the Respondent Bulwer; on the contrary, what has rebounded in strong suspicion and some degree of discredit to the cause on the side which those men were employed; and if I had arrived at the conclusion that the intention of employing those 130 men was to engage one voter to vote for the Respondent Bulwer, who would otherwise have voted for Mr. John Peel, I should have said that the election (at any rate, of the Respondent Bulwer) was void."

After analysing the rest of the evidence, he went on to say:—

"Upon the whole, however, I come to the conclusion that it was an unauthorised act, done by Baraclough for the purpose of obtaining popularity for himself, and that it was not either in respect of the question of law, or upon the established facts, an act which can be designated as having been bribery. It is an act which, so far as I judicially can, I reprehend and condemn, and if I thought it had been done by him with any view to advancing the interest of his employers,—so that I had to impute the intention to do that which was the natural consequence of the act,—I must have held this election to be void."

As to the third point, that is, the ratification by the Respondent Peel of the act of Baraclough, he said:—

"It is a broad principle of law that no man should be answerable for the act of another, except to the extent of the authority he has given him, or that he has allowed him to assume, or in respect to liabilities attached by the policy of the law to certain agencies in which it is thought well, for the benefit of the public, that the agent should be considered to represent his principal whether he has actual authority from him or not, provided only he has an appointment as an agent. But the rule is plain that a ratification

cation after the act is equivalent to an authority given at the time. The rule is also plain as limited to the case in which the principal, the person sought to be made liable as principal, is acquainted with the character of the act at the time when he ratifies. The Respondent Peel in consenting that the men employed by Baraclough should be paid, and paid out of his money, did what would be a sufficient adoption of the act provided the Respondent Peel at the time was acquainted with the character of the act. Was he acquainted with the character of the act? I am satisfied he was not. The conclusion therefore is, that as the Respondent Peel was not acquainted with the illegality of the act of Baraclough, supposing it to have been illegal, at the time when he did the act which would, if he were so acquainted, have amounted to a ratification, his case does not fall within the rule of agency by adoption."

Mr. Justice WILLES in his judgment declared both the Respondents duly elected.

With reference to the law of agency he said:—"It is a principle of substantive law that, for the preservation of the purity and freedom of elections, the member returned shall be answerable, not only for his own acts, but for the acts of his agents, whom he puts in his place to represent him in the conduct of the election. It is unnecessary, after the luminous discussions of that principle, and especially one that has lately appeared, by my Brother Blackburn,* to enlarge upon it. It will be sufficient to dismiss it with an illustration, an illustration, it is true, not involving the constitutional principle which makes the chief value of the rule, but which will at once show its good sense and its justice. If a race were to take place between two vessels for a prize, and the steersman aboard one of those vessels was to thwart his opponent by declining to give way to the vessel that had a right to keep her wind; or if one of the crew hoisted an extra sail not allowed by the rules of the race, and the vessel aboard which that foul play took place was to come in first, the owner could not claim the prize, even by showing that he was away, that he had nothing to do with the misconduct of his servants, or even that he forbade

Law of agency
illustrated.

* *Semble*, the *Bewdley* case, ante, p. 17.

them to be guilty of such misconduct; nor could he mend his position by showing that if no such misconduct had taken place his vessel would nevertheless have been sure to come in first."

Joint attention to the registration does not necessarily imply joint action throughout subsequent election, or joint liability.

As to the joint action of the two Respondents, and their consequent liability for the acts of each other's agents, he said:—

"It has been urged upon the Court that there was a joint action amounting to mutual agency on the part of the two Respondents. It is said that they proceeded jointly, and that they were jointly represented at the register. Everybody knows the importance of attending to the register, and of combining at the register the forces of those who represent one side in politics; and I have no doubt that both the Respondents anticipated the contest which was about to take place; that the Respondent Peel, wishing well to the Respondent Bulwer from the beginning, being satisfied with his coming forward, and desiring that he should be returned with him, but not at his expense, did unite with him in taking care that the register was properly framed and their interests attended to. That registration took place about September. September went by, and after that the two Respondents appear to have pursued different courses."

He concluded by saying that the Petitioners had failed to establish any such joint action between the two Respondents as would make them answerable for the acts of each other's agents.

Land agent not necessarily agent in election matters.

As to the liability of either of the Respondents for wrongful acts, alleged to have been done by one Carmichael, he said:—

"It was proved that Carmichael was the land agent of the Respondent Peel; he was forbidden to interfere in election matters at all, and he did not in fact interfere in election matters for the Respondent Peel; but it was alleged that he did interfere for the Respondent Bulwer, and that he did so with the Respondent Peel looking on, and therefore that he bound them both. Inasmuch as Carmichael was a land agent, and not an election agent for the Respondent Peel, and not an agent in any sense for the Respondent Bulwer, it is clear that the whole of the evidence introduced, with respect to Carmichael's alleged wrongful acts, was irrelevant."

As to treating, he said:—

"Treating to be corrupt must be treating under circumstances,

and in a manner that the person who treated used meat or drink with a corrupt mind, that is with a view to induce people, by the pampering of their appetites, to vote, or to abstain from voting ; and in so doing, to act otherwise than they would have done without the inducement of meat or drink. It is not the law that eating and drinking are to cease during an election ; eating and drinking by voters is specially provided for by the 23rd section of the Corrupt Practices Act, 1854, and that section forbids and makes it illegal to give meat or drink to voters upon the day of the nomination, or upon the day of the poll ; to give meat or drink by way of refreshment, however moderate, to voters, on account of their having voted, or being about to vote ; and even in the case of persons being about to vote, it imposes a penalty of £5 only upon the person who so treats by way of fair refreshment. Now, nothing therefore can make it more obvious that the Legislature did not intend that every bit of bread or sup of drink given to a voter in the course of an election, should have the effect of defeating that election. If the Legislature meant so, it could have said so in the section to which I have referred. It has imposed a special penalty, and made such an act illegal, but it has not said such an act shall avoid the election. What the Legislature has said in the 4th section is that such an act, if done corruptly for the purpose of influencing the election, shall make the election void ; and that by virtue of the 36th section of the Statute, which classes together bribery, treating, and undue influence, the committing of either of them by the member or his agent shall void the election."

What is corrupt treating.
All treating not necessarily corrupt.

As to the way in which treating should be proved, he said :—

"I think it would be well that some course should be taken (of course it must be in conjunction with the other Judges, who have to deal with this subject) for the purpose of in some way marshalling the evidence of treating under the direction of the Court.

Marshalling the evidence of treating, when publicans should be called by Petitioners.

"At Guildford, where a series of local committees were appointed, and where a great deal of evidence was given to show that there was a great number of persons, some voters, some hangers-on, some parasites, who went round to drink wherever they could find drink, and supped out of others' pots, without

paying, I took the course of saying that the Petitioners, if they thought proper to charge acts of that kind as being evidence of treating by the sitting member or his agent, must give some evidence by calling the publicans, in order to show that the order was really given by one or other of such persons, and not call upon the Court to assume that a misdemeanour was necessarily committed from the mere fact of drink being supplied by the publican and talk being supplied by the speaker. At Lichfield, acting upon that view, I plainly stated that the Petitioner had better call the publicans, and let us at once know whether they could give any evidence as to the people who had given orders for the drink ; that course was pursued, and the result was that the whole truth was brought out during the Petitioner's case."

Principles applicable to all circumstantial evidence.

In the course of his review of the circumstantial evidence, which had been adduced in support of the charges in the petition, he took occasion to say as follows :—

" There are certain views, broad and sensible, which are applicable to this and to all cases of circumstantial evidence. There is one principle of the law of evidence which may be said to be universal, that of first ascertaining upon whom rests the burden of establishing the affirmative. You ought to judge of a case just as much by evidence which might have been produced if the affirmative were true, and which has not been produced, as by the evidence which has been laid before the Court. In other words, no amount of evidence ought to induce a judicial tribunal to act upon mere suspicion or to imagine the existence of evidence which might have been given by the Petitioner, but which he has not thought it in his interest actually to bring forward, and to act upon that evidence and not upon the evidence which really has been brought forward. The second principle, which is more particularly applicable to circumstantial evidence, is this—that the circumstances to establish the affirmative of a proposition where circumstantial evidence is relied upon, must be all, such of them as are believed, circumstances consistent with the affirmative ; and that there must be some one or more circumstance believed by the tribunal, if you are dealing with a criminal case, inconsistent with any rational theory of innocence, and when you are dealing with a civil case (otherwise expressed, though probably the result is for the most part the

same), proving the probability of the affirmative to be so much stronger than that of the negative, that a rational mind would adopt the affirmative in preference to the negative."

As to the effect of general drunkenness, not traceable to the Respondent or his agent, he said :—

Effect on
election of
proof of
general
drunkenness.

"If it had been established that there was throughout the borough, or any great part of it, general drunkenness (though it could not be traced to the Respondent or any agent of his), if it produced obvious demoralisation to an extent which must have influenced the election by producing the vote of one or more of the constituency in favour of the Respondent Bulwer, who would otherwise have voted for Mr. John Peel, I should have considered that a strong case had been made, to be rebutted on the part of the Respondent. General bribery unquestionably, from whatever quarter it comes, will vitiate an election, even without proving any such connection, probably because of the propriety of acting upon the presumption that it must have been from some person so interested in the member, or so connected with his agent, that it ought to be attributed to the one, or at least to the other. It has been said that the same law applies to general treating. I desire to abstain from giving any opinion upon that, because I observe that in the Lambeth case* the Committee, no doubt acting upon sound advice, stated that there was a distinction between bribery and treating; and Committees, notwithstanding they were empowered to, and generally did, go into evidence of bribery in the first instance without requiring evidence of agency to be given, appear lately to have insisted—no doubt with a view to the marshalling of the evidence—that agency should be proved first. When general drunkenness is resorted to on the part of the member, there is this distinction between it and bribery. You have people commonly brought up drunk to the poll: you have drunkenness continued up to the time at which it is likely to influence the vote of the man who is so vulgar-minded that he will sell himself for drink. If you make a man drunk to-day, the election being about to take place upon the 1st of March, it may or may not incline him in your favour. He may be your friend in his maudlin state, but when he comes to

* Wolferstan & Dew, p. 129.

his senses the next morning, and feels a huskiness in his throat, and has got rid, more or less, of his vice of yesterday, he would form a very mean opinion of the man who endeavoured to get him to vote upon the 1st of next month by making a hog of him on the 15th of this month. That is not so with bribery. You give the man the money; he has had the advantage of it; he has committed the odious offence, but he has at least the advantage of retaining and of spending for himself the wages of his iniquity. Drunkenness in the way of general drunkenness with a view of influencing the election, according to my reading, would be drunkenness operating upon men at or near the time when you wanted them to come up to the poll to give you votes; and therefore to prove that the borough was generally made drunk in the first week in August, in order that people might be induced to vote upon the 17th of November, requires drawing a much more far-fetched conclusion than to say that each man got a 5*l.* note in the first week in August in order that he might vote on the 17th of November."

Gaps in
Petitioner's
case may be
supplemented
by Respondent's
evidence.

Passing on to consider the evidence given as to certain specific acts of drinking, he said that although it appeared that the Petitioner's case failed in some respects, he had a further duty to perform with regard to it, which was to inspect narrowly the Respondent's case, in order to see whether it supplied those gaps which the Petitioner's case presented.

Object of
treating
women.

Dealing with the case of some women who had been treated by one Shaw, the Respondent's agent, he said the question was, Were they treated in order that they might influence their fathers, brothers, or sweethearts? If so, this would be unquestionably corrupt treating, and would avoid the election.

As to using of public-houses for canvassing purposes, he said :—

Organizing
canvasses at
public-houses a
dangerous
practice, for
two reasons.

"This dangerous practice of organizing canvasses at public houses was resorted to on the part of the Respondent Bulwer at eight places, and at some of these, if not at all, he incurred bill for rooms, though not for drink. When the time came for meetings to be held, he addressed the electors at those eight places. An organization existed here like that in the Lambeth case, which might shortly be described thus: Workmen's Committees were formed—respectable persons who could be relied upon and trusted to preside at those committees, and to set on foot a canvass of the

new voters (who were some of them working men in factories and some in foundries, some being engaged in agriculture) on behalf of the Respondent Bulwer; and I think it may be taken that at the committees which so met there was beer drunk, a part of which is represented in the amounts which were allowed under the terms of fair refreshment when the bills came to be paid upon the part of the Respondent Bulwer.

"Such an organization as this I call a dangerous practice, and for two reasons.

"First, because persons who are no voters at all, who have no interest in either party, and who only care to swig at other people's expense, wherever they think drink is going gratuitously, go round to such meetings, and are allowed to go in under the mistaken notion that they are voters on legitimate business with the committee, or out of good nature not liking to object to them. The candidate is thus exposed to a number of persons of that sort dropping in and drinking what they do not pay for, and then making a great show of it when the trial comes. If you could get ten people who went round to twenty-seven houses, at each of which ten meetings were held, you might get 2700 pieces of evidence, and if you could disarrange it and mix it up and down before the Judge, more or less, and he was too lazy or too little perspicuous to be able to reduce it to its natural order and to see exactly what it all means, you would run a very great chance of his concluding that extensive treating prevailed.

"The second reason is, because committee-men who are employed, and who it has been assumed may be supplied with refreshments, never ought to be. If committee-men are allowed to have drink it is sure to lead to excess. The committee-men are almost sure to bring, occasionally, a friend or two, and to introduce them under the same circumstances as the intruders and parasites to whom I referred as the first class of perilous people would have introduced themselves, and these again form a body of witnesses who greatly add to the mass of evidence out of which the judge has to extract the truth. There is also a third reason, and that is with regard to the landlords themselves. The landlord being called upon to lend his room for the purpose of

holding meetings there, and having, it may be implied, authority to provide fair refreshment to the committee during their labour (which could hardly have the name of treating affixed to it unless it were excessive), takes upon himself, without any orders at all, and upon the chance of being paid by the candidate if he should turn out to be successful, to allow a long score to be run up for other refreshments in addition to what he has been authorized to supply."

Costs.

As to costs, he said :—

"It only remains that I should dispose of the question of costs. I will not put it upon the counsel to make the application. With respect to the Respondent Peel, there is no difficulty. He has been returned for this borough by fair means, and by a majority which most unquestionably pronounces the opinion of the people in his favour. He would never have been petitioned against but for his alleged connection with the Respondent Bulwer. There was no such connection proved to the satisfaction of the Court. A personal attack was made upon him, which, upon the evidence, I am bound to say, has proved utterly groundless. I must order the Petitioners to pay the costs of the Respondent Peel.

"In respect to the Respondent Bulwer, I draw no distinction between him and the Respondent Peel personally. But it must be obvious that the question of the 130 men, and the question of treating, have given me very great anxiety. I think if the case against the Respondent Bulwer had turned only upon the question of treating, I might have pronounced the same conclusion as to him as I have already done as to the Respondent Peel; but I look with so much dislike upon the renewal of any system of private war or any semblance of it in this or any other country, I look upon it as so dangerous, so much to be deprecated, should it be threatened, and so much to be abolished and put down by the strong arm of the law should it arise, that I think the fact of the employment of the mob by Baraclough, though it does not in point of law affect the fate of the election as far as the Respondent Bulwer is concerned, ought in a matter which is to be disposed of by discretion, to induce me to abstain from ordering that the Petitioners should pay the costs of the Respondent Bulwer."

CASE XIV.

BOROUGH OF WESTMINSTER.

BEFORE MR. BARON MARTIN, FEBRUARY 19, 1869.

Petitioners : Beal and others.

Respondent : Mr. W. H. Smith.

Counsel for Petitioners : Mr. Fitzjames Stephen, Q.C. ; Mr. Murch ; Mr. Littler.

Agent : Mr. Cobb.

Counsel for Respondent : Mr. Hawkins, Q.C. ; Mr. Serjeant Ballantine ; Mr. Hugh Shield ; Mr. D. Kingsford.

Agents : Messrs. Rogerson and Ford.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that considerable sums of money were spent on behalf of the Respondent in payments to certain shopkeepers for allowing boards containing the Respondent's bills and placards to be put up in their windows ; and in order to show that this was done with the intention of corruptly influencing votes, evidence was given of the following suspicious circumstances :—

1. The enormous expenditure of the Respondent on the election generally, when compared with that of the other side.
2. The amount paid in respect of the boards themselves, coupled with the non-production of the vouchers relating to that amount.
3. The employment of a person named Edwards, who had been previously reported as guilty of bribery on a very large scale.

This evidence, however, was rebutted by that given by Mr. Grimston, the chairman of the Respondent's committee, who swore that no corrupt intention existed.

The evidence on the charge of bribery failed to establish case.

In the course of the case,

Paying Voters to allow boards to stand outside their windows not necessarily a corrupt act.

It was proved that a number of shopkeepers allowed boards stand outside their windows, on which were posted the Respondent's bills and placards. Some of these shopkeepers were paid in respect of these boards at the rate of 7s. per board per week. Some of them, too, believed that it was intended thereby to influence their votes. The bills and vouchers for these payments were not produced; the whole amount of money paid in respect of these boards was 209l. Also, it was proved that one Edward who was employed to superintend this matter, was a person who up to 1851 was for many years employed in bribing electors at St. Albans.

Mr. *Hawkins*, for the Respondent, contended that it had not been proved that any votes were actually affected in consequence of the money paid on account of these boards.

Mr. Baron MARTIN said :—"That is not the real question. The question I have to try is whether there was an intention on the part of the Respondent's agents that the benefit to arise to voters from being paid to exhibit these boards should influence the votes or induce them to vote. The expressions used in the 17 & 18 Vict. c. 102, are 'in order to influence the vote,' and 'to induce the voter to vote,' and I ought to be satisfied that the payments were made in respect of these boards with that object."

Witnesses called for the Respondents, proved that all that was done in respect to these boards was done *bonâ fide*, and that there was no intention thereby to influence votes.

Mr. Baron MARTIN, in the course of his judgment, said as to this matter :—

"For me to decide that the Respondent is incapable of being elected by reason of these boards, I must be satisfied that when these boards were issued there was in the mind of the Respondent's agents the intention that the payment with regard to them was to be, not for the purpose of compensating the persons exhibiting them, but to be a benefit given to those persons in order to induce their votes. That I am not satisfied of."

It having been proved that voters were employed for the purposes of the election, and were supplied with refreshments by the Respondent on the polling day,—

Mr. Baron MARTIN said:—"If refreshments were given to men actually engaged in the purposes of the election, I do not regard it as treating under the Act. It must be corruptly done to make it treating, and I cannot think that giving food to persons doing work on the day of the election is a corrupt act."

Giving refreshments to voters actually doing work on the polling day, not necessarily corrupt, but may be colourable.

Mr. Stephen, for the Petitioners, urged that it was illegal to employ voters.

Mr. Baron MARTIN:—"If you mean that it is colourable, it is another thing; but assuming that it was *bona fide*, and that nothing more than ordinary meals were supplied to persons actually engaged in the election, I do not think that it is within the provision of the Act."

It was proved that one Davis was a person who canvassed for a society called "The Working Man's Conservative Association." This society was assumed to be formed of working men, but next to nothing was subscribed to it by working men; all the rest of the funds of the society came from a subscription of 60*l.* from the Respondent himself (he withdrew from the society, however, on becoming a candidate), two subscriptions from his partner, and various other sums from persons who subscribed expecting the money to be expended in promoting their political views. The funds of this society were spent in canvassing persons to vote for the Respondent; but the evidence was that it was an independent agency, and that this body was acting on its own behalf.

Canvasser for independent association not agent.

Mr. Baron MARTIN, in his judgment, said that upon this statement of facts he should not hold Davis to be an agent.

It was then proved that Davis's name was contained in a list headed "Westminster Election, 1868. Committee for promoting the election of W. H. Smith; Earl of Dalkeith, chairman," and containing about 600 names.

Committee. What evidence of agency. (2) 390.

Mr. Stephen stated that he put this forward as one among several circumstances to show privity between Davis and the Respondent.

Mr. Baron MARTIN said that it might be an element in the case but that it would be impossible to draw any conclusion from a committee of that sort; in his view a committee meant a limited number of persons, in whom faith and confidence were placed by a candidate and between whom there existed some privity.

Subsequently, in his judgment, he said, as to this:—

“I have said, and the other Judges have said, that bribing one of his committee would affect the candidate; but by a ‘committee’ I meant a number of persons, comparatively few in number, of course, in a county that extends over a considerable district (which would be larger), who were intrusted by the candidate with the work of carrying out his election, in whom he put faith and trust, and who, in fact, were his agents for the purpose of carrying out; but I have never supposed, nor do I believe that either Mr. Justice Blackburn or Mr. Justice Willes ever considered, that where a number of people (600 or 700) choose to call themselves ‘a committee’ thereupon they become ‘agents’ of the candidate for the purpose of making him responsible for an illegal act done by one of them. I think it is a conclusion that could not be borne out by common sense. The committee-man whom I mean, and whom I would hold the Respondent to be responsible for, is a committee-man in the ordinary intelligible sense of the word, that is to say, a person in whom faith is put by the candidate, and whose acts therefore he is responsible.”

Upon Mr. *Stephen*, for the Petitioners, proposing to put in Queen’s Printer’s copies of the Journals of the House of Commons for 1851, as evidence of the committal of one Edwards to Newgate by the House of Commons,

Mr. *Hawkins*, for the Respondent, submitted that this could not be evidence at all.

Mr. Baron MARTIN :—“It had better be proved regularly.”

Mr. *Stephen* further stated that he proposed to put in evidence in this case a book containing a Queen’s Printer’s copy of the Report of the Commissioners appointed to inquire into the *Alban*’s case.

Mr. *Hawkins* submitted that this evidence was not admissible.

Mr. *Stephen* said he could call a witness who saw Edwards at the bar of the House of Commons.

Queen’s
printer’s copy
of the Journals
of the House
of Commons
not regular
evidence of
committal to
Newgate of a
person by the
House of
Commons.

Mr. Baron MARTIN :—"You had better proceed with the evidence."

It appeared that canvassing books were kept by members of a certain independent association, formed to promote the Conservative cause in the borough, and that they were, when filled up, returned to the secretary of the association. He was called as a witness, and produced these books; and Mr. Stephen, for the Petitioners, said that he supposed they were evidence.

Canvassing book not evidence, *per se*, how to be used.
(3) 49.

Mr. Baron MARTIN :—"They are not evidence at all; they are nothing but documents possessed by the witness: you may use them to examine him by, and the examination will then be evidence, but not the books."

Mr. *Stephen*, for the Petitioner, called for certain canvassing returns which he submitted he was entitled to ask for under the general words of the notice to produce "all documents, books, and papers whatsoever and in anywise relating to the matters in question in this case."

Notice to produce "all documents relating to the matters in question."
(5) 46.

Mr. *Hawkins*, for the Respondent, objected to produce them.

Mr. Baron MARTIN :—"I hold that the notice covers every document which ought to be filed and ought to be returned."

Returns sent in to a committee on each day are separate documents.

Mr. *Hawkins* :—"What they are asking for is a quantity of sheets which are returns made by each particular canvasser to the particular committee, and by that committee sent to the central committee. There is no notice to produce them at all."

5 (76).

Mr. *Stephen* :—"They are papers relating to this matter, some of which have been put in."

Mr. Baron MARTIN :—"That is too general."

Mr. *Stephen* :—"We could not know the manner in which they conducted their election."

Mr. Baron MARTIN :—"That will not affect their producing them. Your being in ignorance of existing documents does not at all affect what the law requires a notice to produce to contain. They are bound to produce every document which ought to be delivered to the returning officer, because otherwise it is a neglect or omission to do what the law prescribes to be done."

Mr. *Stephen* :—"I submit we are entitled to the production of

other documents than those which ought to be filed. The returns are part of a series of election sheets, some of which they have used for the purpose of their own case ; and I submit we are entitled to see the rest of them."

Mr. Baron MARTIN : — " You are not entitled to them all."

Subsequently Mr. Stephen again called for these returns. He said they were all tied together, and one of them had been used by a witness to refresh his memory.

Mr. *Hawkins*, for the Respondents, objected to their being produced on the ground that they were all separate and distinct documents, and that they had merely been tied together for convenience : only one of them was in evidence.

Mr. Baron MARTIN : — " He has no right to make a general survey of them. The returns relating to each particular day are separate and distinct documents, and one of these returns relating to one particular day has been put into the hands of a witness to refresh his memory as to a particular vote marked in that return. It is as though six letters had been pinned together, and one of them was referred to, that would give you no right to look at the other five."

Evidence admissible of number of promises made to canvassers.
(5) 272.

A witness, called by the Respondents, stated that he was employed on behalf of a canvassing association to take down, day by day, the returns by the canvassers employed by the association, and to enter the promises they obtained, and to enter them in a book. He was then asked, —

What were the total number of promises ?

Mr. *Stephen*, for the Petitioner, objected to the question on the ground that it involved hearsay upon hearsay.

Mr. *Hawkins*, for the Respondent, submitted that the question might be asked, because if it turned out that the witness had been told that there was a large majority of promises for the Respondent, he would, as an agent for the conduct of the election, have been less likely to consider it necessary to resort to corrupt practices in order to carry the election.

Mr. Baron MARTIN : — " The inference is as remote as can be, but I cannot say it is not an inference."

A witness, on the subject of the boards, was asked,—

Had those boards, or the money you got for them, anything to do with your vote?

A. No.

Mr. Baron MARTIN said:—"The question is not what is the motive that operated upon the mind of the voter. The mind of the voter has nothing to do with it; the question is, the intention of the person who furnished the board. Probably there is no man who ever was bribed but would swear that the bribe had not influenced his vote."

Corrupt notion in the mind of bribed person of no importance.

(6) 216.

Mr. Baron MARTIN, in his judgment, declared the Respondent duly elected.

In the course of his judgment, he said:—

"The first inquiry I have made in every case is whether it has been proved to my satisfaction that the candidate really and *bonâ fide* intended that the election should be conducted according to law."

First inquiry, *bona fides* of member.

As to the amount of expenditure, he said:—

"That which strikes most against the Respondent is the enormous expenditure. The expenditure of nearly £9000 upon an election is a thing almost incredible. But I think there is an observation which arises strongly in his favour. Up to the day of election the Respondent advanced only 4500*l.*; upon the day, therefore, when his seat was either secure or not he only knew of an expenditure of 4500*l.* The residue was paid afterwards, and in all probability he was very much surprised at being called upon to pay an additional sum of 4500*l.*; and I think he must be judged with regard to this matter upon an expenditure of 4500*l.*, and not upon an expenditure of 9000*l.*"

Great expenditure *primâ facie* evidence as to intention against Respondent, but only expenditure known by him up to day of election to be taken into consideration.

As to bribery, he said:—

"The law is a stringent law, a harsh law, a hard law; it makes a man responsible who has directly forbidden a thing to be done, when that thing is done by a subordinate agent. It is in point of fact making the relation between a candidate and his agent the relation of master and servant, and not the relation of principal and agent. But I think I am justified, when I am about to apply such a law, in requiring to be satisfied beyond all reason-

Relation between candidate and agent more like that of master and servant than that of principal and agent.

Proof of bribery by agent must be strong and cogent.

able doubt that the act of bribery was done, and that unless proof is strong and cogent—I should say very strong and cogent—it ought not to affect the seat of an honest and well-intentioned man by the act of a third person.”

Candidate not responsible for his agent's son.

With regard to the son of one Hottón, an agent of the Respondent, he said :—

“ His may be a strong case, but although young Hotton seems to have been active with regard to the election, I cannot hold an act done by him because his father was a person for whom Respondent would be responsible, would make young Hotton also.”

Mr. Baron MARTIN said, as to costs,—

Costs.

“ Although my impression is that costs should follow the event, I certainly should not in this case give the entire of them, for my judgment, this case has lasted too long. If, in our judgments, Mr. Justice Willes, Mr. Justice Blackburn, and I consider that we ought to be governed in giving costs by consideration as to whether there was reasonable and probable ground for the petition, I should be inclined not to give costs, I think there was reasonable and probable ground—indeed I think there was strong ground—for it.”

Eventually it was decided that each party should pay their costs.

CASE XV.
BOROUGH OF COVENTRY.

BEFORE MR. JUSTICE WILLES, FEBRUARY 20, 1869.

Petitioners: Berry and another.

Respondents: Messrs. Henry William Eaton and Alexander Staveley Hill.

Counsel for Petitioners: Mr. Henry James ; Hon. E. Chandos Leigh.

Agent: Mr. T. H. Kirby.

Counsel for Respondents: Mr. Huddleston, Q.C. ; Mr. Gates ; Mr. Dugdale.

Agent: Mr. T. Dewes.

THE petition contained allegations of bribery and corrupt treating ; and the fourth allegation was, that Alexander Staveley Hill did corruptly pay certain sums of money for and on account of procuring his election and return to Parliament ; and also that Henry William Eaton did corruptly pay certain sums of money for and on account of procuring the election and return not of himself, but of the said Alexander Staveley Hill to Parliament.

In support of the fourth allegation in the petition, it was proved,—

That the Respondent Hill had unsuccessfully contested the borough in March, 1868, (the present petition arising out of the election in November of that year,) and that after paying the expenses of his contest he was called upon, after a certain period had gone by, to pay the further sum of £800, in respect of expenses, which had all the appearance of having been illegitimately incurred in the contest of March ; but he considered

Corrupt payment of illegal expenses incurred at previous election comes within 17 & 18 Vict. c. 102, s. 2 (3).
Payment of one candidate's expenses by another candidate not illegal,

except it be to
purchase
influence.

himself bound in honour to pay them, and in July he did pay them. Up to that time he had had no communication whatever with the respondent Eaton, and he then intended not to offer himself again as a candidate.

Mr. Justice WILLES, in his judgment, said as to this :—

“The intention of the fourth allegation is to assail the return of the two Respondents upon the ground that there had been the payment of 800*l.* for expenses illegitimately incurred in respect of the election of March, for the purpose of stopping the mouths of those who claimed to have the 800*l.* due to them, and of influencing the election of November by so stopping their mouths. If that had been proved, I have no doubt, as a matter of law, that the payment of such a sum as that, by way of illegitimate expenses, to people who no doubt were voters of the borough, and had the means of influencing voters of the borough, with a view to stop their mouths, and to induce them either to assist the two Respondents, or, at any rate, not to oppose them because their unlawful claims had not been satisfied, would have made the election void. But that has not been proved; therefore, in this point of view, the petition has failed.”

Upon this it was contended by Mr. *James*, for the Petitioners, that although the Petitioners had failed to prove the fourth allegation in the sense in which it had been originally taken, yet that evidence had come out in the course of the Respondents' own case, which sustained the averment in another and a different sense. It had been proved that in the middle of the October previous to the election, endeavours were made to induce the two Respondents to come forward together. At first the Respondent Hill expressed himself unwilling to come forward, and he did not consent to do so until the Respondent Eaton (in answer to a letter, requesting him to do so) wrote, and promised to bear all the expenses of the contest, both his own and also those of the Respondent Hill. The letter and the answer of the Respondent Eaton were as follows :—

“October 14*th*, 1868.

“MY DEAR SIR,

“I saw Hill last night, and promised I would call upon you to-day *via* Coventry. I have a great deal to attend to, however, and could not get into the City. My object in seeing you

was to arrive at an understanding, which hereafter could admit of no doubt. Hill having left this in my hands, it would be false delicacy on my part to omit to ask you to let us have a letter from you clearly defining, no matter how briefly, the basis upon which we start. I take it to be as follows:—1st, That Hill under no eventuality is to pay anything but his own personal expenses; and, That no matter what course the elections may take, you will bear him harmless in all election expenses; 3rd, That should any question arise during the contest as between you and him, it shall be referred to some mutual friend, named by yourself, whose decision shall be final; 4th, That you mutually agree to be loyal and true to each other. Nothing can be clearer than this, I think; and if you so understand it, then kindly write me a line to the effect. I will keep a copy of this letter, and will ask you to do the same. I shall be at the Dolphin, Southampton, for some days, so kindly address your reply there. I have had very satisfactory letters from Messrs. Lynes and Rotherham, who seem in great feather as to our success.

“I am faithfully yours,

“FREDERICK GRAY.

“H. W. EATON, Esq., M.P.”

“October 15th, 1868.

“MY DEAR SIR,

“In reply to your note dated yesterday, which has been forwarded to me here, I think there can be no possible misunderstanding between Mr. Hill and myself, as to the basis upon which he has consented to contest Coventry with myself. I think your statement of our understanding to be perfectly correct, and I accept it in all its particulars. As you suggest, I will keep your letter, which I consider binding.

“Believe me, yours very truly,

“HENRY W. EATON.

“FREDERICK GRAY, Esq.”

Upon this evidence Mr. *James* contended that by the treaty entered into between the two Respondents by the letters of October 14th and 15th, an agreement had in fact been come to

that the Respondent Eaton should bear the Respondent Hill expenses if the Respondent Hill would consent, and on condition that he did consent, to coalesce with the Respondent Eaton, and to give the Respondent Eaton the benefit of his influence. That agreement, he submitted, was illegal within the meaning of the Corrupt Practices Prevention Act, 1854, s. 2 (3).

Mr. Justice WILLES, in his judgment, said as to this :—

“The question with which it is necessary to deal is, whether, in point of law, the treaty, as it has been called, entered into between the two Respondents by the letters of the 14th and 15th of October, was a treaty which proved the fourth allegation of the petition and which of itself amounts to that special sort of bribery which is prohibited and provided against by the third paragraph of the second section of the Corrupt Practices Prevention Act, 1854. This is a question of much novelty and also of difficulty, involving as it does a question of fact as well as a question of law. Is that agreement in itself illegal, as a matter of law? It is insisted that it is in itself illegal under the terms of the third clause of the second section of 17 & 18 Vict. c. 102, by which it is enacted that “every person who shall directly or indirectly by himself or any other person on his behalf, make any gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, shall be guilty of bribery.” Therefore anything, great or small, which is given to procure a vote would be a bribe, and if given to another to purchase his influence at the election, it unquestionably also would be a bribe and would avoid the election. It would be bribery in the case of the person who gave, as well as in the case of the person who received the benefit, and if the Respondent Eaton agreed to give the Respondent Hill 5*l.*, I might say a farthing in point of law,—if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which the Respondent Hill had with the electors of Coventry, and of advancing the Respondent Eaton's interest as a candidate at the election. The question is, whether an agreement by one candidate to pay the expenses of another is or is not a bribe.

“Before dealing with the facts, I will conclude the statement

the law. At the conclusion of the second section of 17 & 18 Vict. c. 102, there is a proviso which has a distinct bearing on the question : ' Provided always that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses, *bond fide* incurred at or concerning any election.' Now it ought to be thoroughly understood that this proviso relates merely to the expenses of the candidate, and not to the expenses of any other person. It does not relate to the expenses of voters : to pay the expenses of voters on condition of their voting or abstaining from voting, is unquestionably bribery.

"But the candidate may pay his own expenses, and the candidate may, paying his own expenses, employ voters in a variety of ways; for instance, he may employ voters to take round advertising boards, to act as messengers as to the state of the poll, or to keep the polling-booths clear. He may also adopt the course which appears to have been adopted in this city—that is to say, the city or borough is divided into districts, and committees are formed amongst the voters themselves of selected persons, who go about and canvass certain portions of the district; and for their services these persons are sometimes paid and sometimes not paid. Now, unquestionably if the third clause of the second section was to be taken in its literal terms, the payment to canvassers, under such circumstances, being, as it is, a payment to induce them to procure votes by means of their canvass, would come within the terms of this clause, and would avoid the election.

"We have here, therefore, a test supplied of the meaning of the third clause of the second section, by means of which we see that it was not intended by this section to do away with every payment made by the candidate in the course of an election. And to come more nearly to the present case, it affords a test of whether this third clause was intended to prevent every payment to persons for assisting the candidate in obtaining the election. I shall not refer to any of the cases in which the question of the employment of voters has come before election committees: they are quite familiar to those who have paid any attention to the subject, and inasmuch as I have had occasion to cite them elsewhere* in judgments, which

* Vide ante, page 79.

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are before the House of Commons, I do not think it is necessary to refer to them again.

“ But with respect to canvassers employed to procure the votes of voters within the literal terms of the third clause of the second section, I must take leave to refer to the Lambeth case, which is reported in “ *Wolferstan and Dew's Reports*,” page 129 ; and is a case to which I attach considerable importance, because the matter then was very much considered under the chairmanship of Mr. Ingham, a gentleman of known good sense and of much legal experience ; and it was held that the system (a system which was adopted in this city) of dividing the boroughs into wards and forming committees among the voters, and employing them to send out canvassers, was not objectionable, notwithstanding that there was a payment made to the canvassers for their services in canvassing. It is hardly necessary to point out how exceedingly dangerous the adoption of that system is, both in respect of the payment of canvassers, and also in respect of that which has been held lawful, viz., the supply of fair refreshment to unpaid canvassers whilst engaged actually, and not colourably, upon work, and, in like manner, of refreshments to committee-men. It is proper, whenever this system is referred to as not being unlawful in itself, to say that it exposes Members to very great danger, and that when it is merely colourable it would avoid the election. I refer to these cases to show that it is not every payment for the purpose of procuring a vote that can be held to be within the third clause of the second section. I do not treat the case of canvassers as presenting any close analogy to the case of a colleague in a contest for a city. Of course even the most distant comparison would be a comparison of great things with small, but it is necessary first to ascertain whether this third clause is to be taken in its literal sense, and if not, to determine what is its proper application to the case in hand. Its proper application to the case in hand, as it appears to me, is this, that the payment to be made under the third section must be a payment for the purchase of influence ; a payment to some person who has influence in a place in order to purchase that influence : it must be a payment or gift, or loan of something valuable, to him in consideration of his lending his influence or his countenance in the election. As it appears to me, it is not an offence within the third

clause for a candidate to bring forward another person to stand as his colleague, he himself being a monied man and a party man, a man who does not care to spare his money in the interest of his party, who desires to have some person to stand with him in order to advance the interest of his party, and who is satisfied to pay the legitimate expenses of the election of himself and of the other candidate, whom he desires to bring forward with such a view. You must show an intention to do that which is against the law before you bring the case within any of those highly penal clauses of the 17 & 18 Vict. c. 102. Therefore, forming the best judgment I can, I must pronounce my opinion as I entertain it, that to bring forward another candidate under such circumstances, without a view to purchase his influence, with the intention of serving a man's party, and because he does not mind spending his money upon the legitimate expenses of the election of himself and of the other candidate, with the view only to serve his party, and not with the view to purchase influence for himself, does not fall within that third clause of the 17 & 18 Vict. c. 102, s. 2.

"Having thus endeavoured to give my opinion upon the law, it only remains to deal with the facts. The question of fact to be decided is, whether the treaty which was entered into in October between the two Respondents was a treaty having for its object the purchase of the Respondent Hill's influence in the city, because if it was, I agree with Mr. James that the expression 'legal expenses *bond fide* incurred at or concerning the election,' as used in the proviso to the second section, would not include the expenses of another candidate at that election, if they were paid for the purpose of purchasing influence. The inquiry to be made is this—Was it a purchase of the Respondent Hill's influence? Was it a purchase for the Respondent Eaton's individual advantage in the contest? Was the agreement entered into by the Respondent Eaton with the selfish view of aiding himself by that influence, or was what he did fairly to be explained by a desire to serve his party, without regard to any influence of Mr. Hill? Taking all the circumstances of the case into consideration, these questions ought, as it appears to me, to be answered in favour of the purity of intention of Mr. Eaton.

"I will conclude this part of the case by saying that I express no opinion whatsoever upon the propriety of such an arrangement

as was in this case made between the two candidates. It must be quite obvious to anybody who will cast his mind back upon the history of parliament that many persons of brilliant abilities, and who have been of very great service to the country, have been unable to pay their own expenses, and have been brought in at the expense of others; and that is so notorious that it confirms the opinion that I form upon the true construction of this third clause of the second section of the 17 & 18 Vict. c. 102, taken by itself. Therefore I come to the conclusion that the fair payment of the expenses of a member if he will stand does not of itself constitute an illegality under the provisions of this Act."

In the course of the case:—

Telegrams not privileged and must be produced if called for.

40.

A telegraph clerk who had been subpoenaed to produce certain telegrams said, in answer to the question whether he produced them, "I have them with me, but I have instructions from the secretary of the Telegraph Company not to let them leave my hands unless authorised by the court."

Mr. Justice WILLES said the secretary had no such power. Telegraph companies were clearly not privileged.

The witness having asked if the judge authorised him to hand over the papers to counsel,—

Mr. Justice WILLES said he was bound by law to produce them. They were then handed to counsel.

Adverse witness who may be cross-examined may also be contradicted.

41.

A witness, Parker, called for Petitioners, having denied that a certain conversation took place between him and one Smith, Mr. *James*, for the Petitioners, proposed to ask another witness questions with reference to the conversation he had overheard between Parker and Smith, in order to contradict Parker's evidence.

Upon an objection being taken to this,

Mr. Justice WILLES ruled that the questions might be put, and stated that the rule was that where you have an adverse witness you may cross-examine him, and where you may cross-examine him you may contradict.

If case not down in particulars,

A witness, Eliza Hayward, was called for the Petitioners for the purpose of proving that her husband had been bribed.

Mr. *Huddleston*, for the Respondents, objected to her being examined, on the ground that this case was not correctly and specifically mentioned in the particulars.

evidence as to it not inadmissible, but time to be given for inquiry.

Mr. Justice WILLES directed that the name of the person, the number on the register, and the place, be given to Respondent's counsel, and meanwhile the rest of the case to be proceeded with as to allow Respondents time to make inquiries; he could not refuse to accept the evidence.

67.

Evidence having been given as to an attempt to induce a man to personate an absent voter,

Instigation by agent of Respondent to personate voters sufficient fraud to avoid election.

Mr. Justice WILLES remarked that it might in his opinion be said in the petition that an agent of the member had got voters personated, and that that, if established, would be sufficient fraud at common law to set aside the election.

It having been proved that a message was sent to a voter by an agent of the Respondents in these words, "Come by the first train to Stag, Bishop Street," Mr. Justice WILLES said as to this in his judgment :—

Legal construction of message to come and vote.

"The question is, what is the legal construction of this document, 'Come by the first train to Stag, Bishop Street'? Does it amount to an act or inducement, affording evidence of a contract, which in the case of *Cooper v. Slade* was held to amount to bribery?

I may dismiss this by referring to the opinion of my brother Bramwell in the House of Lords, in the case of *Cooper v. Slade* (p. 765). He there gave the opinion that even in that case, where the terms were 'Your expenses will be paid,' those words added by a person in the committee-room of the Member were not, under the circumstances, sufficient evidence of such a conditional promise. However, his opinion upon that point, which was one rather of evidence than of law, did not prevail; but he pointed out in the clearest terms that no amount of hopes or expectation on the part of a voter is enough to constitute bribery, and every one agreed that a mere request to a voter to come up and vote could not constitute bribery. It is quite clear that it cannot as a matter of law, because if I were to ask one of the learned counsel to go to London and vote for me at a club or elsewhere where an election

was to take place, and say, 'Come by first train' to whatever it may happen to be, although looking to the fact that an election was about to take place, there could be no doubt that I meant that he should come and vote for me at some expense. I think that would be not only without authority, but that it would be contrary to the authority to be found in the opinions of all the learned Judges who dealt with the case of *Cooper v. Slade*, to say that a contract to pay the expenses was implied. If I send to a coal merchant and say, 'Send me so many tons of coals,' of course it means, 'I will pay you for your coals;' but if I write to a man to do a thing to which a price is not usually attached, and in which the law says there shall not be a price paid, I think that the implication of condition would be contrary to the principle and also to the authority of that case of *Cooper v. Slade*."

Mr. Justice WILLES in his judgment declared the Respondent duly elected.

As to certain evidence of treating given in the case, and the reason why it was not sufficient to establish a case, he said:—

"The treating which has been proved here has been treating of a sort quite consistent with a total absence of corrupt or unfair design on the part either of the Members or of any person who represents them. As an instance, may be taken that supper, at which although the meat was supplied by an agent of the Respondent and the drink was paid for by contributions amongst those who were present, some giving more and some less, it turned out to be a supper some time before the election, having reference to it in no doubt, but only because it was a supper held in celebration of the efforts of the Tory party at the registration; it was a supper at which Tories supped, and it was a supper at which Tories paid. It was a banquet, or entertainment, in pursuance of the old habit of the race to meet and feast over any occasion upon which labour in which they have been engaged has been brought to what they consider a successful end. Eating and drinking may go on, notwithstanding an election coming, in the ordinary and usual course. When eating and drinking takes the form of enticing people for the purpose of inducing them to change their minds and to vote for the party to which they do not belong, then

Eating and drinking in connexion with politics, e. g., to celebrate a registration triumph, not necessarily corrupt treating.

comes corrupt, and is forbidden by the statute. Until that gives the mere fact of eating and drinking, even with the connection which the supper had with politics, is not sufficient to make out corrupt treating."

On the subject of bribery, he said :—

"With respect to bribery, as well as with respect to treating, I all ever hold it to be a wise and beneficial rule of constitutional law, quite apart from the 17 & 18 Vict. c. 102, that for the purpose of securing purity and freedom of election, candidates should be answerable for the acts of their agents, as well as for their own acts, and that a person can no more claim to be a Member of Parliament for a place as the result of an election in which his agent has been guilty of bribery, than a person can fairly claim a prize if the person whom he employs to ride his horse or to steer his vessel has been guilty of foul play in the course of his employment."

Bribery.

Rule of constitutional law that candidates should be responsible for acts of agents.

With regard to mere offers to bribe, he said :—

"Although these cases have been classed below those of bribery by both the learned counsel, it cannot be supposed that an offer to bribe is not as bad as the actual payment of money. It is a legal offence, although these cases have been spoken of as being an inferior class by reason of the difficulty of proof, from the possibility of people being mistaken in their accounts of conversations in which offers were made ; whereas there can be no mistake as to the actual payment of money."

Offers to bribe as bad as actual bribery.

As to the effect of 6 Vict. c. 18, s. 98, in preventing the election judge from going into cases of non-residence, he said :—

"The 6 Vict. c. 18, s. 98, enacts that the Committee (now the Election Judge) may inquire into and decide upon cases of persons who have been objected to before the Revising Barrister, and as to whom he has pronounced an express decision ; if no objection has been taken, and he has pronounced no express decision, the Committee, or the Judge sitting here, cannot even on a scrutiny go into the question of qualification. But if an objection could not have been made before the Revising Barrister, then in respect of such an objection arising afterwards it appears to me that it comes clearly within the expression 'legal incapacity at the time of his voting,' which may be inquired into by an Election Com-

What cases as to non-residence may be gone into by the election judge.
6 Vict. c. 18, ss. 79, 98.

mittee, or now by a Judge. And such was the decision in the Cambridge case, reported in 'Wolferstan and Dew,' page 45. It is proper, however, to mention that the very same Committee singularly enough, at page 50, appears to have had before them the case of a person who had not resided during the six months ending upon the 31st of July; and with respect to such a person inasmuch as the Committee said an objection might have been taken before the Barrister, and was not taken, they declined to enter into the case of his not being resident after the 31st of July, upon a ground which seems to me, I own, of a good deal of subtlety, namely, that there was no cessation of residence after the 31st of July, but that the cessation of residence was at a period at which it might have been inquired into by the Revising Barrister. As to the decision in the Cambridge case, I cannot myself, looking at the 79th section, say, if I were to put my own construction upon it, should not have come to the same conclusion—I think I should.

The law as to persons who vote when not entitled to do so.

2 Will. 4, c. 45, ss. 27, 32.
Duty of Revising Barrister.

With regard to the law as to persons who vote when not entitled to do so, he said:—

"It is provided by the 2 Will. 4, c. 45, ss. 27 and 32, that in order to be placed upon the register a person must have been resident upon the last day of July and for six months preceding. Then there are subsequent enactments (especially 6 Vict. c. 18) which provision is made for lists to be framed of persons entitled to vote, and by which those lists are to be revised by competent persons with reference to the qualification, including that of residence during the six months ending on the last day of July in each year. The duty of the person who revises is fully satisfied by inquiring as to the right up to the last day in July, and with reference to the continuance of the right after the last day in July it is enacted by 6 Vict. c. 18, s. 79, that no person shall be entitled to vote at any future election for a Member unless he shall, ever since the 31st of July in the year in which his name was inserted in the register, have resided and at the time of voting shall continue to reside within the city,' &c.; therefore it is clear that with respect to persons who have ceased to reside after the 31st of July, they are not entitled to vote at the election. I have stated elsewhere* my opinion with reference to such a person.

* Vide ante, page 14.

voting, and I repeat it (my opinion has not yet been pronounced with reference to any other case within the 79th section), that a man who ceases to reside, and has gone off and taken up his residence elsewhere, leaving behind him no wife or household gods in the city for which he intends to return—who cannot fairly be said to retain a residence in the city, but has entirely removed his residence elsewhere beyond the city, and the statutory seven miles which are considered as part of it for the purpose of residence,—I say that that person, knowing the law and coming here to vote, even if there were no remedy—which I think there is in the event of his doing that which by law he is not entitled to do—has done an act which is unjustifiable in point of fairness and honesty. If he does not know the law, or if he is in doubt about the fact, I should say nothing about his honesty; but if he does know the law, and does know the fact, I say that that man, in voting, does an act which cannot be maintained in point of honesty, as it certainly cannot in point of law.”

On the question of the payment of the travelling expenses of non-resident voters who are entitled to vote, he said :—

“The law may be shortly stated thus: Before the case of *Cooper v. Slade* (6 House of Lords Cases, 746), which was decided in the year 1858, a doubt existed as to whether, under the law as it stood, the travelling expenses of out-voters might be paid. I speak now of out-voters who have a right to vote by reason of their residence continuing, and whether the promise to an out-voter to pay him if he came up and gave his vote for a particular Member, or to pay him his expenses of going back to his place of residence, if he happened to be in the place of polling, in order that he should not vote,—whether the payment of expenses in any form,—whether in the former, which has been called a mild form of bribery, or in the latter, which would be a point-blank piece of bribery,—was illegal, and illegal by reason of its being a promise of money within the first clause of the second section of the 17 & 18 Vict. c. 102, a promise to give money ‘in order to induce any voter or voters to vote or to refrain from voting;’ and the result was that it was decided in that case of *Cooper v. Slade* that a promise to a voter, whether he be really entitled to vote or not, who happens to be out of the place at the time of the election,—a promise to pay

Travelling expenses of non-resident voters entitled to vote. *Cooper v. Slade*, 21 & 22 Vict. c. 89, s. 1; Representation of the People Act, 1867, s. 36.

even his bare expenses if he will come up and vote for a particular candidate, is illegal. That led to a discussion as to whether or it was just that a candidate should be debarred from the payment of the bare travelling expenses of the voters, and it was insisted that there was nothing unjust in it; that the voter ought to be enabled to vote, and as he gained nothing by his travelling expenses, they ought to be allowed to be promised him, and paid him. That was answered by an argument which has prevailed and which expresses the law,—that the danger of allowing promises or payments of travelling expenses to voters being made a colourable cloak, and of paying them more than they are entitled to in respect of such travelling expenses, is so great, that they shall not they do continue to be forbidden by the law. Accordingly, in August of the year in which the decision in *Cooper v. Slade* was given, it was enacted by the Legislature in the first section of 21 & 22 Vict. c. 87 (which must be taken as distinctly recognizing the decision in the case of *Cooper v. Slade*), ‘that it shall be lawful for any candidate or his agent to provide conveyance for a voter for the purpose of polling at an election, and not otherwise; but it shall not be lawful to pay any money, or give any valuable consideration to a voter for or in respect of his travelling expenses for such purpose.’ Therefore it is lawful, under that Act, for a candidate to give a voter a lift in his carriage to the poll, but it is not lawful for the candidate or his agent to promise a voter his travelling expenses if he will come up and poll, or to pay such expenses afterwards, if that payment is made corruptly, within the provisions of the 17 & 18 Vict. c. 102, as to payments after the vote in respect of having voted. So stood the case until the passing of the Representation of the People Act of 1867, which, by the 31st section, enacts that it shall not be lawful for any candidate or any person on his behalf, at any election for any borough, ‘to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person; and if any such candidate, or any person on his behalf, shall pay any money on account of such conveyance,’ then the payment is to be considered illegal; and that the payment is to be considered to avoid the election, if made to a third person not a voter, and not to induce a voter to vote though such a consequence would follow if the promise were made.

voter,—but that it shall be unlawful to pay any money on account of conveyance, either to the voter or any other person.”

As to costs, he said :—

Costs.

The question which remains is that of costs. As a rule, costs are to follow the event ; and in ordinary actions they almost invariably follow it, the exceptions being rare. I did intend to treat these cases as if they were ordinary suits between party and party. I have, however, become deeply impressed with the feeling that there is a third party, no less interested than those who are immediately engaged in the petition, and that I ought in each case to consider, not merely whether the petition has failed or has succeeded, but whether upon the whole I think there are grounds, founded merely upon the truthfulness of witnesses, but founded upon the very character and history of the transaction upon which it is for the public benefit that the petition should be presented, upon which I think that the Petitioners have had reasonable probable cause for instituting the inquiry. I shall say no more at that point unless it is desired that I should do so. I think this is a case in which a petition has been most reasonably presented and prosecuted ; and therefore I say nothing about the result, although the petition has in the end, in my mind, altogether failed of arriving at the result of unseating the Members.”

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CASE XVI.

BOROUGH OF BRIDGEWATER.

BEFORE MR. JUSTICE BLACKBURN, FEBRUARY 23, 1869.

Petitioners: Messrs. Henry Westropp and Charles William Gray

Respondents: Messrs. Alexander William Kinglake and Philip Vande

Counsel for the Petitioners: Mr. Serjeant Parry ; Mr. Collins.

Agent: Mr. Trevor.

Counsel for the Respondent, Kinglake: Mr. Henry James.

Agent: Mr. Lovibond.

Counsel for Respondent, Vanderbyl: Mr. Serjeant Sargood ; Mr. Edl

Agents: Messrs. Reed and Cooke.

THE following report was made as to this case :—

“ There is reason to believe that bribery extensively prevailed at the election. The reasons for coming to this conclusion are, it appeared that statements had been made that if any money was paid to any voters on behalf of the Respondents, the same should be paid to all who voted for them. The inquiry was stopped from its being admitted that agency was established with respect to Henry Chapman Bussell; so that it was not ascertained how far the statements were made by agents for whom the Members were responsible, but it was sufficiently proved that an expectation existed among the voters that these promises would be fulfilled. A large number of voters abstained from voting till past one o'clock, about which time Bussell was proved to have bribed three persons, and there was strong reason to suspect, though it was not proved, that he bribed others, and that voters were also bribed by Andrew Allan; but both Bussell and Allan having gone away

could not be examined as witnesses. Before the proved and suspected giving of bribes the Respondents were in a great minority, but after one o'clock they immediately began to poll many votes, and were placed in a majority. There is reason, therefore, to believe that many of those who voted for them after one o'clock were induced to do so either by money actually paid to them, or by the expectation of receiving a sum similar to that paid to others."

At the commencement of the case,

Mr. Serjeant *Parry*, for the Petitioners, put in the following canvassing card :—" *Bridgewater Election*.—The honour of your vote and interest is respectfully solicited on behalf of Mr. Kinglake and Mr. Vanderbyl, the Liberal candidates."

Joint candida-
ture.
Effect of
agency.
2.

He also stated that in the accounts it appeared that joint bills were sent in to the candidates, and that joint payments were made on their behalf.

Mr. Justice BLACKBURN :—"I suppose it can hardly be disputed that the two candidates stood jointly and canvassed jointly."

Serjeant *Sargood* (for the Respondent Vanderbyl) :—"I think we must admit that."

Mr. *James* (for the Respondent Kinglake) :—"I cannot make that admission with respect to the act of every gentleman."

Mr. Justice BLACKBURN :—"No; they stood jointly, and canvassed jointly. What effect that would have upon making the agents of one the agents of the other I will consider afterwards, when I hear all the evidence."

In the course of the case,

Eliza Circler, a witness for the Petitioners, proved that her husband gave her 10*l.* on the day of the election.

Statement of
voter as to
where and for
what he re-
ceived money.
16.

Serjeant *Parry* :—"Did you ask him anything about it?"

Witness :—"I asked him where he got it."

Mr. *H. James*, for the Respondent Kinglake, objected to this.

Mr. Justice BLACKBURN ruled that it was admissible.

Mr. Serjeant *Parry* :—"Did he or did he not tell you?"

Witness :—"Yes."

Mr. Serjeant *Parry* :—" What did he say to you ? "

Witness :—" He told me Bussell gave it to him to vote for the Respondents."

Evidence to
contradict hos-
tile witness.
27.

John Vearncombe having been called on the part of the Petitioners to prove that he had been bribed, denied it.

Mr. Serjeant *Parry*, for the Petitioners, said he proposed to call two witnesses, Hordwood and Denman, to prove what this witness said to them, submitting that the witness was a man who, as the Petitioners alleged, had been bribed, but upon whose evidence they could not rely, and who was, therefore, in the same position as a witness called by the Respondents to prove that he was not bribed.

Mr. Justice BLACKBURN said he thought Serjeant Parry could not call Hordwood and Denman for the purpose indicated by him.

Evidence of
what had been
said after the
poll was closed,
inadmissible.
41.

Robert Blackmore, examined on the part of the Petitioners, was asked what one Buttle had said to him on the evening of the poll day.

Mr. *H. James* objected to evidence being given as to a conversation which took place after the poll.

The objection was allowed.

Statements
with respect to
payments for
beer.
62.

William Marels was asked, on the part of the Petitioners, what the landlady of the Bath Bridge Inn had said to him about payment for some beer which had been ordered of her by James Hunt.

Mr. Justice BLACKBURN said that anything done or said between the landlady and the people ordering the beer was evidence, but not what the landlady had told the witness about it. That would have to be proved by the landlady herself.

Telegraphic
messages bear-
ing on the
election to be
produced.
90.

Mr. Edward Gregory, chief clerk in the manager's department of the United Kingdom Telegraph Company, being asked by Serjeant *Parry*, for the Petitioners, " In answer to a subpoena, do you produce certain telegraphic messages you received on or about the time of the last election here ? " said, " My instructions are only to produce those telegraphic messages on the express order of his Lordship."

Mr. Justice BLACKBURN said :—" They must be produced, but only those that bear upon the election."

Before the termination of the Petitioner's case,

Mr. Serjeant *Sargood*, on behalf of the Respondent Vanderbyl, said that he felt that it would be useless any longer to contest the petition, but that he should now merely ask permission to ask the Respondent Vanderbyl to prove that he was in no way personally implicated in the corrupt practices which had been proved to exist.

Mr. *James* then made a similar statement on behalf of the Respondent Kinglake.

The Respondents were then called to vindicate their own character, and were not cross-examined.

Mr. Justice BLACKBURN then gave judgment, declaring the Respondent unseated.

Speaking with reference to the law of bribery, he said :—

"I believe the law to be, though I do not think it has been distinctly settled, that if the bribery or corruption was to such an extensive degree (though it was not shown to be in any way connected with the agents or persons belonging to the members) as to show that it was not a fair and open election, but a corrupt election; or if it was shown that corrupt practices of any sort, however small, were committed by an agent of the sitting member, the seat is vacated; and it has been established that it is not at all necessary and essential that the agent should have been acting with the knowledge or consent, or with the request of the member: if he abuses his authority, and commits corruption, it equally vacates the seat, as if the corrupt practice had been committed by the express direction and authority of the member."

What bribery will affect an election.

On the question of agency, he said :—

"It has never yet been distinctly and precisely defined what degree of evidence is required to establish such a relation between the sitting member and the person guilty of corruption, as should constitute agency. I do not pretend to be able to define it, certainly: no one yet has been able to go further than to say, as to some cases, enough has been established; as to other, enough has not been established to vacate the seat; this case is on the right

What evidence necessary to establish agency never yet precisely defined.

side of the line, that is on the wrong ; but the line itself has never yet been definitely drawn, and I profess myself unable accurately to draw it."

Costs.

Mr. Justice BLACKBURN said :—"I need hardly say, that in a case like this, where the Petitioners have succeeded, the ordinary rule is that the Petitioners have costs ; and as there is no reason to depart from the ordinary rule, the Petitioners must have costs."

CASE XVII.

BOROUGH OF BODMIN.

BEFORE MR. JUSTICE WILLES, FEBRUARY 22, 1869.

Petitioners : Adams and others.

Respondent : Hon. E. F. Leveson Gower.

Counsel for Petitioners : Mr. Rodwell, Q.C. ; Mr. R. Harris ; Mr. G. C. Alexander.

Agents : Messrs. Holmes and Co.

Counsel for Respondent : Mr. Serjeant Ballantine ; Mr. Bowen.

Agent : Mr. Murton.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

The principal charge relied on by the Petitioners was one of corrupt treating against one Grose, who was an agent of the Respondent. Upon the evidence adduced the Judge declared that he was not satisfied of the existence of corrupt intention.

Mr. Rodwell, Q.C., in opening the Petitioner's case, said that he intended to call evidence to prove that one Bray had offered money to two men, Langdon and May, to induce them to refrain from voting.

All persons affected by corrupt practices must be mentioned in particulars.

Mr. Serjeant Ballantine, for the Respondent, objected to this case being gone into, on the ground that the names of Langdon and May were not in the list furnished by the Petitioners in pursuance of the order for particulars.

(2) 1.

Subsequently Mr. Rodwell submitted that, inasmuch as Langdon

and May had not accepted the money offered to them, they did not come under the operation of the order for particulars, and that he was, therefore, entitled to go into the case.

Mr. Justice WILLES said that he should not allow the case to be gone into without a special application was made on the subject.

Mr. *Rodwell* then stated that there was another case not specifically mentioned in the list; this was a case of an offer of a bribe to a relation and friend of a voter, in order to influence that voter's vote. He submitted that it was never necessary to give the name of a briber under an order for particulars, *à fortiori*, therefore, it was unnecessary to give the name of a person merely offering a bribe.

Mr. Justice WILLES, after looking at the directions contained in the Corrupt Practices Prevention Act, 1854, and the rules framed in pursuance of the Parliamentary Elections Act, 1865, said that it was obvious that the intention was that every person affected by the corrupt practices should be mentioned in the particulars.

Evidence of what was said by Respondent's agent after the election is over not admissible.
(2) 137.

Mrs. Mary Short, the wife of a voter, was called for the Petitioner, and stated, in the course of her evidence, that one Collins, an agent of the Respondent, had come to her shortly before the election and said, "If your husband does not vote for the Respondent, it will be worse for you in the winter." She went on to say that Collins had come to her again on the Sunday before the present inquiry, and had said something. She was then asked, "What did he say to you last Sunday when he came?"

Mr. Justice WILLES said that he did not think the question admissible.

Mr. *Rodwell*, for the Petitioner, submitted that he was entitled to ask it, on the ground that the conversation was part of a proceeding which was being inquired into as a whole.

Mr. Justice WILLES:—"I am of opinion the question cannot be put. A man is bound by the admissions of his attorney made in the course of the cause, but a man is not bound by a statement of an attorney at a time when he goes to examine a witness who has been summoned by the other side for the purpose of knowing what that witness is about to say. That is not an admission made in the cause. It is a mere statement of his attorney. Evidence

of that kind is very much subject to be misrepresented, and has never been admitted in cases except through want of care at the time. When Mr. Collins is called he may have put to him that which it is supposed that the present witness may answer to the question you desire to put to her, that is to say, if it be material, otherwise not. And if he should deny what it is supposed that he can state that he said, he may then be contradicted by calling his or another witness. That has, in my experience, been the universal practice. It would be contrary to the practice in these proceedings, and it would be introducing a most inconvenient course, if it were allowable to call any man with whom an agent may have talked from the time of the election up to the time of the trial of the petition, and to begin by asking that man what the agent said to him, without even suggesting that it was anything material. It would be turning the inquiry into something worse than an inquisition. I can quite understand why election committees have sometimes admitted statements made by election agents within a short period after an election, and if such a question is ever raised before me, it will be time to pronounce my opinion when the case arises."

In answer to a question put by counsel for the Petitioners, Mr. Justice WILLES said that he was induced by a consideration of public policy to allow any case in which the sitting member is alleged to be personally implicated to be added to the particulars, giving time, if necessary, for the case to be answered; but he would not allow any case against an agent to be added to the particulars, unless it be shown to have come to the knowledge of the Petitioners since the particulars were delivered.

Cases which may be added after delivery of particulars. (2) 197.

Mr. Justice WILLES, in his judgment, declared the Respondent duly elected.

As to the law of agency, he said :—

"Of course there are many persons who are employed at an election, and who in one sense are agents of the candidate, but who are not agents in the sense that the election would be considered void by reason of their misconduct. What is then the extent of authority which will make a person an agent, so that misconduct

Agency within meaning of 17 & 18 Vict. c. 102, s. 36.

to the extent of bribery or treating, or other corrupt practice, will have the effect of unseating the member, even although he may have been innocent of such corrupt practice himself, and may have been unaware that it was committed, and may even have forbidden it to be committed by the agent? The meaning of 17 & 18 Vict. 102, s. 36, is this, that if, supposing bribery, treating, or undue influence to have been legal acts, it would have been within the scope of the employment of the person who commits either of them to do this in advancing the views of the candidate in the capacity in which the agent is employed, then his committing such acts, notwithstanding they are illegal by the statute, shall bind the member to the extent, not of making him subject to penalties, but of having the election at which such practices took place by an agent declared void. All I say now is that the agent must be an agent employed by a member to canvass, that is not necessarily to canvass generally, but to canvass a particular voter or voters in respect of whom the act was done. Of course the act might be extended, on the one hand, to a person engaged in the general business of election, who of necessity would have the power implied of doing the minor act of getting votes; on the other hand, it might be limited to the case of a person who was employed to canvass a particular voter or particular voters only, and then that person would be one whose authority being limited to such voter or voters, his illegal act in respect of others could not affect the member, because he would be only an agent in the particular limited capacity. Again, there might be put, proceeding still in the same direction, cases in which a person, although nominally and popularly a canvasser, would really be no agent at all. You might put the case, which I believe is not uncommon, and which I could conceive might take place very easily in a county or other large constituency, without authority, properly speaking, to canvass at all; a person who, though called a canvasser nominally, was in substance not a man whose influence was relied upon, but was rather, upon the facts, a mere messenger sent round to know how the voters in the district meant to give their votes—a person sent round rather for information for his employer than with a view to his exercising any influence either personal or by his powers of persuasion, upon the

persons whom he was sent to ask how they meant to vote. And I can conceive that it would be very unjust with reference to the latter class of persons, unless he were really proved to be an agent by other evidence, to make the member liable for what he did, to hold, in fact, that he was an agent at all."

As to the light thrown upon the law of agency by the Parliamentary Elections Act, 1868, s. 44, he said :—

Parliamentary
Elections Act,
1868, s. 44.

"The expression used in that section is 'a canvasser or agent for the management of the election.' This expression seems curiously to chime in with the rule adopted by the Judges who have had to deal with these matters."

As to the meaning of the 36th section of 17 & 18 Vict. c. 102, he said :—

Meaning of
17 & 18 Vict.
c. 102, s. 36.

"The only matter that ever made me entertain a doubt upon the construction of that section, was the including of treating in the same category with bribery and undue influence. Bribery is dealt with by the second and third sections. The offence of bribery is committed by any person who gives or promises anything to induce another to vote, or to abstain from voting; and of course it is committed by a person who accepts a gift or offer, no matter what the form of the gift or benefit may be. The language of the 2nd and 3rd sections is sufficient, I think, to include every case of an unfair attempt to influence by an offer of any advantage. And the offence under that 2nd section may be committed by the member or by an agent, or by a person who is wholly unconnected with either. The 4th section, on the other hand, dealing with corrupt treating for the purpose of influencing the election, or a vote of a voter at the election, in terms is limited so far as any direct penalty is imposed to the candidate and voter only, as I read it, and therefore it seems at first sight as if it is only the misconduct of the candidate in respect of treating that should have the effect of avoiding an election. When, however, the 36th section is turned to, it is found that whether the candidate himself or his agents be guilty of bribery, treating, or undue influence, the same consequence is to follow. He cannot be elected during the existing Parliament, and he is also rendered incapable of sitting, and the latter words have the effect, not only of preventing him from being elected *in futuro* to a vacancy during the Parliament, but they

react in a proceeding like this upon the election which is in question, and make it the duty of this tribunal to declare the election to be void, so soon as it is compelled in the course of its duty to declare the candidate, either by himself or his agents, guilty of either of those practices. The doubt which crossed my mind was whether, reading the section by referring each to each, it ought not to be limited to bribery, treating, or undue influence of a candidate, and bribery or undue influence of a candidate, and bribery or undue influence (not treating) of his agent, but I think to put that limited construction upon it would be to adopt what certainly has not been treated as the fair interpretation of the Act, and has not been the usual interpretation of the Act. I think that the literal interpretation of the 36th section, without reference to the difficulty arising out of the 4th section, is the proper one to be adopted."

As to the 23rd section of 17 & 18 Vict. c. 102, he said :—

17 & 18 Vict.
c. 102, s. 23.

"While it appears clear to me that the 36th section of the 17 & 18 Vict. c. 102, does, by reference to the 4th, make corrupt treating by an agent a ground for holding the election to be void, I am equally clear that the 36th section does not so incorporate the 23rd section as that an act done by either the member or an agent in violation of the 23rd section only, shall make the election void, unless that act also falls within the provision of the 4th section. It should seem to have been usual in former times, and no doubt was the practice at least up to the year 1854, when the Corrupt Practices Act was passed, without any improper design upon the voters, and with a view to profusion, which some might dignify by the name of hospitality, to give every voter who came up pledged for a candidate, or who had voted for a candidate, at the election, refreshment, either by opening a common table at some inn where the voters breakfasted before they went to the poll, or where they had refreshments before they left the town, after polling, and before they returned to their homes. I cannot help thinking that that was the sort of practice with which, whether corrupt or not, the Legislature was dealing in the 23rd section of the statute, and also I am inclined to believe, though I cannot precisely cite my warrant for believing it, that where a farmer, for instance, came up from a distance to vote at a county election, it was not uncommon to have such an open table as that

I have referred, not for the purpose of catching people's the attraction of the meal, but simply as it was then reasonable and was not uncommon.

Give a voter something to eat upon the day of the polling in itself treating, the 23rd section would have been under the 4th section, dealing with corrupt treating, would have been sufficient to dispose of the case. Moreover, if it had been by the Legislature in making that sort of practice which here and elsewhere illegal, as no doubt it is now by the Act, to make it also amount to corrupt treating within the meaning of the 4th section, the Legislature would have so declared under the 23rd section. Has the Legislature so declared itself? The section deals with the case of 'a candidate who shall corrupt himself,' and so on, 'provides or causes to be provided,'

'any meat, drink,' and so on, 'for any person, in order to be seduced,' which would refer to general ingratiation, 'or for the purpose of corruptly influencing that person or person, to give or refrain from giving, his vote,' which is not to deal with pampering the appetite of some particular persons, without any general hospitality in the way of treating. In order that the case should fall within that section it is necessary to prove, not only the fact that meat or drink was given to a voter (I am now dealing with treating), but that it was done with a corrupt design to influence the voter to obtain a vote or votes.

Turning to the 23rd section, which deals with the mere giving of refreshments to voters on the day of the poll, that section after reciting that doubts have arisen as to whether the giving of refreshments to voters on the day of nomination or polling is or is not according to law, goes on to 'declare' that 'the giving of any refreshment to be given to any voter, on the day of nomination or of polling, on account of such voter having polled, or about to poll, any meat, drink, or entertainment, in the way of treating, or any money or tickets to enable such voter to purchase refreshment, shall be deemed'—what? not corrupt treating, but shall be deemed 'an illegal act.' Now, what are the consequences that follow? A person who is guilty of the offence of

corrupt treating under the 4th section is to forfeit 50*l.*, and a voter who shall corruptly accept meat, drink, &c., given under the 4th section, shall be incapable of voting at the election, and his vote, if given, shall be utterly void. Under the 23rd section, on the other hand, the only consequence is, that the person offending, by which I understand the person who gives the voter the meat upon the days of nomination or polling, whether with corrupt intention or not, shall forfeit the sum of forty shillings for each offence, to any person who shall sue for the same, together with the full costs of the suit."

Promise of
refreshments
in futuro
equivalent to a
bribe.

As to the promise of refreshments *in futuro* being equivalent to a bribe, he said :—

" I quite agree that if that were made out, quite apart from the question of corrupt treating, there would be a bribe within the first clause of the 2nd section, by reason of Grose offering valuable consideration to the voters, in order to induce the voters to vote or to refrain from voting, which, with reference to procuring food to be consumed *in futuro*, would be bribery ; whereas the mere giving of food to be consumed on the spot is looked upon certainly in a more lenient way, and is dealt with separately, in the manner I have already described, by the 4th section. It is somewhat remarkable, with reference to this distinction between bribery and treating, that it has existed from very early times ; and that even with respect to that form of bribery which has always been considered the most odious, the bribery of a person who holds a judicial place, express provisions have been made distinguishing treating from bribery. And without going back to old books, I may mention what is within my own knowledge, that when I took the oath of a Judge some fourteen years ago, one of the terms of that oath was (and, unless it has been altered by the recent Acts, I suppose Judges take the same oath at the present day), you shall not take any gift from any man who may have plea pending before you, unless it be meat or drink, and that of small value. That is not a mere form, chanted by the person who takes that oath, which has existed and been handed down from very ancient times ; it is as much as to express that the law will trust even a person who may have to decide upon the lives and properties of others to take, but only in the form of refreshment, which is to be

consumed at the moment and not pocketed or reserved for future enjoyment, small quantities of meat and drink. Moreover, it is an illustration of that saying, which is quite familiar to lawyers, that the law deals with substance and not with shadows. The law allows those trivial matters which occur from time to time, and cannot be prevented, which really do no mischief except in the minds of the suspicious, no inference is to be drawn against a person who simply eats or drinks in the way of moderate refreshment. Well, now, I am quite conscious that that which might present attractions to one man which he could not resist, may to another appear possible to avoid. A hungry creature will go into the trap for a bait, at which the well-fed one will turn up his nose with disdain. But it must be obvious (I have said enough, and I meant no more in what I said than to introduce what really is at the bottom of the decision in all these cases) that the Judge must satisfy his mind whether that which was done was really done in so unusual and suspicious a way that he ought to impute to the person who has done it a criminal intention in doing it, or whether the circumstances are such that it may fairly be imputed to the man's generosity, or his profusion, or his desire to express his good will to those who honestly help his cause without resorting to the illegal means of attracting voters by means of an appeal to their appetites."

Applying these principles just laid down to the facts of the case, he went on to say that evidence had been given that refreshments were partaken of by certain voters at the house of one Grose, on the polling-day.

"The true question here is, first of all, whether what Grose did was only letting persons who had polled eat at his house on account of having polled, or whether the house was open with the corrupt intention of catching certain voters as they came in, and inducing them to vote for the Respondent upon the ground that they would by so doing obtain admission to Grose's house: whether, in fact, what Grose did was a mere illegality within the 23rd section of 17 & 18 Vict. c. 102, or whether it was a corrupt illegality so as to come within the 4th section. And further, there is upon these facts a question of bribery to be considered, because, apart from the proper inference to be drawn from the mere fact

What questions arise on evidence of treating.

When giving refreshments is to be considered as bribery.

that there was a meal at Grose's house at which persons who voted for the Respondent got refreshments after they had voted, it would still have to be considered whether there was no previous promise made by Grose to one or more persons (though one would be quite enough) that he should have a dinner if he came in and voted for the Respondent."

After discussing the whole of the evidence brought forward both sides, he concluded his judgment by answering all the questions in favour of the Respondent.

Costs.

As to costs he said :—"The case ought not to be considered forming any exception to the general rule that the Petitioner having failed, ought to pay the costs of the Respondent."

CASE XVIII.
BOROUGH OF PENRYN.

BEFORE MR. JUSTICE WILLES, FEBRUARY 24, 1869.

Petitioners : Broad and others.

Respondents : Mr. R. N. Fowler ; Mr. Eastwick.

Counsel for Petitioners : Mr. Serjeant Ballantine ; Mr. Macnamara.

Agents : Messrs. Wyatt and Hoskyns.

Counsel for Respondents : Mr. Giffard, Q.C. ; Serjeant Sleigh.

Agents : Messrs. Baxter, Rose and Norton.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

Evidence was given in several cases as to the employment of voters, but it was not established in any case that they had been colourably employed in order to influence their votes.

Evidence was also given as to bribery, but no case was established.

It was also attempted to prove that a promise had been made to a deaf and dumb voter that if he voted for the Respondents he should be sent to an asylum where he might be cured, but this case entirely broke down.

Before the commencement of the case,

Mr. *Giffard*, for the Respondents, called attention to the insufficiency of the particulars furnished by the Petitioners, pursuant to Judge's order. He asked that counsel for Petitioners should be

If Respondents prejudiced by insufficiency of particulars

furnished by
Petitioners,
adjournment
will be granted
at Petitioners'
cost.

(1) 2.

called upon to state in full in the opening the names of all persons alleged to be bribed or treated.

Mr. Justice WILLES said that he would apply a remedy in the only form he could; that is to say, if the Respondents were injuriously affected by the withholding of particulars that then ought to be an adjournment in order to enable them to answer the case, he should order the costs of the adjournment to be paid by the Petitioners, and if the Petitioners succeeded he should consider whether their non-compliance with the order of the judge ought not to be visited by the Judge abstaining in his discretion from ordering the Petitioners' costs to be paid.

In the course of the case,

Agent extolling
candidate to
voter—and
suggesting pro-
bability of his
giving employ-
ment to voter
not necessarily
corrupt.

It was proved that one Rule, a sail maker, was in want of employment before the election, and he applied for employment to one Freston, the Respondent's agent. Freston, in answer to his application did not distinctly promise him work, but it was submitted on the part of Petitioners that what Freston said to him as to the Respondent Fowler's getting him employment did amount to a promise to him conditional upon his voting for the Respondents.

Mr. Justice WILLES said as to this, in his judgment:—

“I am not at all aware that if the Respondents had given him employment *bonâ fide*, that is to say, without at all intending to corrupt the man's mind, they might not have done so. A man is not bound to give notice to quit to all his tenants of his way of thinking if he is going to stand for the county, or to refuse to take into his service a man of his way of thinking if he is going to stand up for the borough. He must not do that as a reward for the vote which he hopes to obtain, and he must not make the vote a condition of giving employment. But the employment of persons to do work must go on in election times as well as in others; the affairs of life cannot be brought to a standstill. If you have a sum of money, or a benefit, for which nothing is returned, conferred upon a voter, you have a tangible case which cannot be explained away merely by saying, ‘I did it, and I had no particular reason for it.’ You have then a case in which a member or his agent must be called upon to give an account of what they meant, and

to show satisfactorily that that which *prima facie* was giving a benefit to a person which might have the effect of inducing him to vote for the member was really done with some other and innocent motive. I am clear that where an unfavourable inference is to be drawn from the fact that some person has been employed one ought to take care to be quite sure that there is something more than merely getting the man's work for that which is the real equivalent for the man's work. I believe that Freston did in this case praise up the Respondent Fowler, that he did commend him as a good man to stand for the borough, in some such way as this, 'That is the man for our borough; he is sure to do you good, and to advance your interest in Parliament, and if he has any employment to give he will be sure to select people from this town,' and so on. There is an old maxim applicable to all transactions for commodities, and I suppose that Members of Parliament are not commodities exempt from it, that simple general commendation of the article you deal in is not to be considered as fraudulent."

It was proved that one Behenna applied to Freston, the Respondent's agent for employment. Freston sent him to a person who gave him a month's work, a fortnight before the election, and a fortnight after. Freston knew at the time that Behenna was a voter. Nothing, however, was said about his vote till after he was told where he might go and get work. Then he was asked whether he intended to vote for the Respondents, to which he answered yes. He did vote for the Respondents.

Mr. Justice WILLES said as to this in his judgment:—

"Before the passing of the Representation of the People Act, 1867,* committees had often to discuss whether the employment of voters was to be considered as bribery. There is in the reports a series of cases, of some of which I gave a list upon a former occasion.† In these cases it appeared that scores, and in some instances hundreds, of people were employed as messengers and

Employment of voters—how far permissible. Corrupt Practices Act, 1854, s. 2. Representation of the People Act, 1867, s. 11.

* Section 2 enacts that voters employed by the candidates in respect of the election within six months before the election are to lose their vote, and it is a misdemeanor for such to vote.

† Vide, ante, p. 79.

watchers, and so forth, that a great proportion of these were voters and that they were paid for what they did.

“If the mere employment of a man who was a voter, expected to vote for a Member, was bribery of itself within the second section of the Corrupt Practices’ Act, 1854, it is obvious that the conclusion in each of those cases must have been at once that a man paid by a Member, who would not have been employed but for the election, is to be considered as accepting the Member’s retainer, that therefore you ought to impute the payment to a desire to induce the voter to vote, therefore there was bribery, and therefore the election void. But that was not the reasoning adopted. The conclusion adopted in those cases is that unless the employment was discolourable, unless, that is to say, it was an employment only in name, and it was shown that the money was given either for doing nothing, or was given in excess for the services rendered by the voter, there was no bribery. If a man was taken into an employment in order to influence his vote ; if, for instance, ‘Behenna’ had intended to vote for ‘Smith and Hodgson,’ or for no one at all, and then Freston had said, ‘Oh, come into the employment of the Respondents, and vote for them,’ that would have been a bribe no doubt. If he had said to Behenna, ‘Oh, come into the employment of Messrs. Fowler and Eastwick,’ Behenna, having engaged himself to the other side, there would have been strong reason for inferring that it was indirectly a bribe, because the inference would be that it was intended to change the man’s mind. Where, however, there is the case, as Behenna’s was, of a man who intended to vote for the Respondents, and through the intervention of an agent of theirs, got a month’s work, there is not necessarily a case within the terms of the second section of the Corrupt Practices Prevention Act, 1854.

“I dispose of Behenna’s case in this way. I cannot myself see the distinction between employing a man for the purposes of the election and getting a man employment at his ordinary wages and at proper wages in another capacity, except that the former would seem to be rather more objectionable than the latter ; and I see very great objection in the former employment, though not at all in the latter, unless all the ordinary operations of human

life are to come to a standstill, simply because there happens to be an election coming on."

Commenting upon another case of alleged colourable employment of a voter, he said further on this subject:—

"If a man who has a large shipbuilding yard, after setting up as a candidate for a place, takes into his employment men whose services he really wants, without rejecting those whom he knows to be favourable to him, and who he knows intend to vote for him, it would be, in my judgment, an abuse of language to call that bribery. To take another case. Suppose a voter said, 'Well, I really cannot vote for you, for I have to leave for the Continent this evening, it would be so inconvenient for me to stay;' and the candidate were to answer, 'Every vote is of great importance; pray stay and vote, and you shall have a bed at my house.' Supposing a candidate were to address that to some one in his own condition of life, certainly one might with a perverse ingenuity come to the conclusion that both the voter and the candidate were corrupt people. But I hardly think that could have been said, supposing the candidate had been a Tory and the voter had been Sir Robert Harry Inglis, or supposing the candidate a Liberal and the voter Mr. Byng. You must in such case look, not so much to the literal terms which are used, as to the substance and reason of the thing. I think it would not be right or reasonable to hold that there was bribery in those cases unless there was colourable employment or a condition made."

Upon Mr. *Giffard*, for the Petitioners, calling attention to the fact that the names of two witnesses about to be called by the Petitioners were not in particulars,

When case will be investigated, though not in particulars.

Mr. Justice WILLES said that the cases appeared from the opening to be so serious that he should feel it to be his duty to investigate them in some form or other.

(1) 152.

Mr. Justice WILLES, in his judgment, declared both the Respondents duly elected.

With regard to the rendering of accounts, in pursuance of 26 Vict. c. 29, s. 4, and as to what expenses should be included in them, he said:—

Return of expenses, what items should be included.

"A Mr. Freston was sent down at considerable expense to make

inquiries prior to the registration; he was also employed at the registration. These are expenses which could not, as I read the Act, probably come into a properly framed account, though I should not like to advise any one to leave them out, who was anxious to avoid the penalties of not accounting."

Costa.

As to costs he said :—

"I do not think that there is anything to take them out of the general rule."

CASE XIX.

BOROUGH OF SALFORD.

BEFORE MR. BARON MARTIN, MARCH 2, 1869.

Petitioners: Messrs. Roderick Anderson ; Jesse Bryant ; Edward Charlton Harding.

Respondents: Mr. Edward Cawley ; Mr. William Edward Charley.

Counsel for Petitioners: Mr. Higgin, Q.C. ; Mr. Pope ; Mr. Edwards ; Mr. Armitage.

Agents: Messrs. Sale and Co. ; Mr. Charles Makinson ; Messrs. Reed and Co.

Counsel for Respondents: Mr. Holker, Q.C. ; Mr. Herschell.

Agents: Messrs. Slater, Hiele's and Co. ; Messrs. Tahourdin.

THE petition contained allegations of bribery, treating and undue influence, and, for a fourth allegation, that the Respondents did by themselves and other persons on their behalf, hire and engage and pay money for and on account of a number of conveyances for the purpose of conveying voters to the poll, and which were used for such purposes on the day of the election in their interest.

It was proved that a considerable number of cabs were hired for the Respondents, not for the conveyance of voters to the poll, but for the canvassers to go in to the places where the voters were at the poll, the canvassers then walking up to the poll with the voters. It was not proved (although it was alleged), that in many instances voters were conveyed in these cabs. Some evidence was given of general rioting and intimidation, and also of treating, but no case was established on either ground. Only 2s. 6d. was proved to have been spent in bribery.

ELECTION PETITIONS.

In the course of the case,

Upon evidence being tendered as to the conveyance of votes to the poll,

Mr. *Pope* submitted that by 30 & 31 Vict. c. 102, s. 36, it was made illegal to pay money on account of the conveyance of votes to the poll, and that, if it was done wilfully and knowingly in violation of the Act of Parliament, it was a corrupt act, and that if the corrupt act had the effect or was intended to have the effect of influencing a vote it would avoid an election.

Mr. *Holker* contended that the violation of the Act might possibly render a candidate liable to an indictment or some punishment, but to nothing more.

Mr. *Pope*.—"That is in the case of an isolated act, but in this case it is a systematic and intentional doing of an illegal act."

Mr. Baron MARTIN:—"If a candidate deliberately and of purpose runs counter to an Act of Parliament which directs a thing not to be done, I think that common law will operate upon it, and the election will be void. However, I shall not decide it myself, but if it is necessary, I shall grant a case for the Court of Common Pleas."

Subsequently Mr. *Holker*, for the Respondent, after citing the Representation of the People Act, 1867, s. 36, contended that the Act made it illegal to pay money either to a voter or to any one on behalf of a voter on account of his conveyance to the poll, because such payment might be made a cover for bribery. But he submitted that providing hired cabs was not the same as paying money, either to voters or to any one on behalf of voters, and that it was not an act which amounted to offering unfair inducement to voters to come to the poll within the meaning of the Corrupt Practices Act, 1854. Even if it were illegal it did not follow that it would avoid the election. The payment, in order to have that effect, must be made in the shape of bribery. He then referred to 21 & 22 Vict. c. 87, s. 1, and pointed out that that Act distinctly made it lawful "to provide conveyance for any voter for the purpose of polling him." That Act was not repealed in any express terms, and he contended that it was not repealed either by implication. Of course, if it was impossible to construe the two sections consistently with one another, then the later statute would abrogate the earlier.

But here it was perfectly possible to do so if the construction was put upon the later Act which he suggested, namely, that it was not illegal to hire a cab, though it was illegal to pay money for the conveyance of a voter.

Mr. Baron MARTIN:—"I think it is perfectly plain. The 36th section of the Representation of the People Act, 1867, shows as plainly as possible that the intention of the Legislature was that voters should either walk to the poll or go in their own carriages. The excepted cases of East Retford, and other boroughs, make that intention plain, because in those boroughs the voters live at a distance from the polling places. Therefore it is permitted in those cases that hired conveyances should be provided. The legislature has made most stringent provisions as to having polling places in the most convenient places in boroughs for every voter. The intention is to prevent the hiring of conveyances for voters, and to provide that people should walk to the poll or go in their private carriages, and it seems to me that it is the same thing whether a man rides in a private carriage provided for him or comes in a hired carriage."

Mr. Holker:—"If that had been the intention of the Legislature, one does not see why they did not repeal the 1st section of 21 & 22 Vict. c. 87 altogether."

Mr. Baron MARTIN:—"I think the Legislature does repeal it."

Mr. Pope, in the course of his reply, on being requested to point out how, assuming the conveying voters was an illegal act, it affected the election, submitted that if a candidate or his agent were found wilfully committing an illegal act for the purpose of affecting the election, that illegal act so committed would by common law avoid the election. He drew attention to the definition that Mr. Justice Willes had given of the word "corruptly," namely, purposely doing an act which the law forbids.

Mr. Baron MARTIN, in his judgment, after citing the 4th allegation in the petition, said, as to this:—

"I have already stated that if I considered the allegation proved, I should reserve the point for the Court of Common Pleas, but after the evidence of the Respondent Cawley and others, I could not state as a fact that the conveyances were hired for the purpose of conveying voters to the poll."

Drunkenness
of women
strong evidence
of general state
of riot in a
borough.
(2) 388.

Upon it being proved that a number of women were drunk
the streets on the polling-day,—

Mr. *Holker*, for the Respondents, said that he was at a loss
know to what part of the petition such evidence was directed.

Mr. Baron MARTIN :—" My impression is that the allegation
this petition means that there was undue influence within
meaning of section 5 of the 17 & 18 Vict. c. 102. The s
question arose at Cheltenham,* and I there stated that if th
was evidence that the election was void at common law on acco
of general violence and intimidation, I would give a case for
Court of Common Pleas as to whether such evidence was ad
sible under this petition."

Mr. *Holker* then said that he referred more particularly to
evidence about the drunkenness of women.

Mr. Baron MARTIN :—" I take it that that is clearly an elem
in the case. In giving a description of the state of a town i
state of riot, if there was a good deal of drunkenness among
women, I think it is a very strong element in the matter."

Account of
bankers for
Respondent's
Committee not
evidence
against
Respondent.
(3) 266.

Upon a clerk from the bankers for the Respondent's commit
being asked to produce the account of the Respondent's commit
with the cheques,—

Mr. Baron MARTIN said :—" The account is not evidence, if
Respondents object ; you must examine witnesses as to it. '
account is merely a means of refreshing the memory of the cle
he must be taken through it item by item."

Corrupt pay-
ment made
after an
election by a
canvasser, but
without the
privity of the
Respondent,
does not affect
seat.

Ordinary
agency ceases
at the close of
the poll.

One Balderstone, a canvasser for the Respondent, and v
chairman of the district, was asked by Mr. *Pope*, for the
titioners,—

Q. " Do you remember the Thursday after the election
Kennedy coming to you ? "

A. " Yes."

Q. " What did he ask you for ? "

A. " He asked me if he was to be paid anything for his w
on the polling-day."

* Vide ante, p. 64.

Mr. Baron MARTIN (to Mr. Pope):—"Have you considered whether or not, supposing it were bribery by Balderstone, to pay what would affect the election?"

Privity necessary for agency after.
(5) 215.

Mr. Pope:—"I have considered it as money paid on account of his having voted."

Mr. Baron MARTIN:—"I apprehend that would not affect the candidates. I take it the facts are these: Balderstone was a vice-chairman and a canvasser; the election is over; and after that time he gives a man money on account of the election. I will take it it was corruptly given within the meaning of the latter part of the 2nd section of the Corrupt Practices Act, 1854. But how could that affect the candidates?"

Mr. Pope:—"Any person who does that is guilty of bribery."

Mr. Baron MARTIN:—"No doubt: but it is one thing to be guilty of bribery, and another thing to be guilty of bribery so as to affect the election within the 43rd and 46th clauses of the Parliamentary Elections Act, 1868. It strikes me that bribery, after the election, by a friend of the candidate, or a person who had been a canvasser or vice-chairman before the election, would not affect the seat."

Mr. Pope:—"I should say that any bribery, whenever committed, necessarily avoids the election."

Mr. Baron MARTIN:—"No doubt if the candidate did it himself it would at once affect the seat, but if done by a person who merely was a man holding some office before the election, I should have very much doubt if it would have the same effect. It is no doubt bribery, and the persons concerned in it would make themselves liable to a penalty for bribery."

Mr. Pope submitted that incorporating into the 36th section of the Corrupt Practices Act, 1854, the definition given of bribery in the latter part of the 2nd section, viz., corruptly paying money to a person on account of his having voted, section 36 must be read as follows: "If any candidate . . . shall be declared guilty by himself or his agent of corruptly paying money to a person on account of his having voted, such candidate shall be incapable of being elected," &c.

Mr. Baron MARTIN admitted that the word bribery in the 36th section ought not to have any limitation put upon it,

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that he added, "In my opinion the agency ceases with the election."

Mr. *Pope* :—"That is a question of fact."

Mr. Baron MARTIN :—"It is not a question of fact at all. Supposing that five years (I am merely putting it so to make it absurd) after an election, which has been perfectly pure and honest, a voter goes to a person who acted at the election as vice chairman and canvasser, and says to him, 'I voted for your friend and I now expect you will give me 5*l.* for having done so,' and the man agrees to give it him, under such circumstances a Judge might very well arrive at the conclusion that that was a corrupt payment. But is it possible you have any authority to show that such an act could have relation back and affect the candidate or the person who had been returned, and was filling the seat? If so, the seat of every man who is returned to Parliament would be in the hands of any foolish person who might be induced a week or a fortnight after the election to bribe a voter."

Mr. *Pope* :—"Consider what your Lordship is about to rule. If your Lordship holds the payment after the election was not to avoid the seat, all that would be necessary to be done would be that all the bribes should be given after the return is made, and the seat would be safe."

Mr. Baron MARTIN :—"If the bribes were given with the privity of the member, what you say would be perfectly right because it would be the same thing as the member himself bribing, and I have no doubt it would affect the member, if he was the person who corruptly gave."

Mr. *Pope* :—"Then why not if his authorised agent was the person?"

Mr. Baron MARTIN :—"Because the agency is over."

Mr. *Pope* :—"Of course your Lordship may find as a fact that the agency of Balderstone terminated at the conclusion of the poll. That is a question of fact, not of law."

Mr. Baron MARTIN :—"If you satisfy me that what took place amounted to this,—that the Respondents, or either of them, went to Balderstone, and said, 'There is a man who has pretended to do some work, but I want to reward him for his vote: will you give him 5*s.*?'—no doubt that would affect the seat. But if there was

such act of the candidate shown, the seat would not be affected."

Mr. *Pope* :—"If your Lordship finds that the act was done either by the candidate nor his agent, of course the seat would not be affected."

Mr. Baron MARTIN :—"You are using the word 'agent' ambiguously. An agent to affect the seat by reason of an act done subsequently to the election, would be a person with whom there is personal privity for doing the act."

Mr. *Pope* :—"I was assuming for the moment that the act in question was done by the candidate or his agent, and my argument then was, that whether it is done before or after the election does not affect the character of the act."

Mr. Baron MARTIN :—"It does not, if we take the word 'agent' in a particular sense. The agent that I should consider would affect the seat by his act after the election would be a person who does that act with the privity of the member. A person who previously was an agent in the sense that he had been an agent in the election, would not, in my judgment, affect the seat by any subsequent act of his done after the election without the privity of the member."

Mr. *Pope* :—"Take the case of the old boroughs, where men were brought up in a flock and paid so much a head some time before the election. In scores of cases that was held by Committees to avoid the seat."

Mr. Baron MARTIN :—"That was because the Committees found as a fact that the vote was given under the implied contract that the money would be paid."

Mr. *Pope* :—"The result of this principle would be then, that any candidate might have a score of agents to whom 5s. or 10s. was of no consequence, whose agency would cease at the close of the poll, but who may have committed a hundred acts of bribery."

Mr. Baron MARTIN :—"If you can prove that there were a hundred acts of bribery of this kind done, so as to induce me to come to the conclusion that in point of fact it was paid with the privity of the member hanging back and avoiding taking any part in it in order that the bribe might be given, you affect him at once."

Mr. Baron MARTIN, in his judgment, said further, as to this :—

“Mr. Balderstone, being a committee man, or district chairman, and being a canvasser, his agency for the purpose of affecting the sitting members terminated with the election. He was not a person authorised to make any payment subsequently to that, but he was a person who was employed for the purpose of the polling day and the canvassing ; he was employed for that and for nothing else. I think also the act must be done by the canvasser anterior to the election, otherwise the consequences would follow that a perfectly honest and pure election, of which upon the return nothing whatever could be said, might be affected by an act done the following week by an indiscreet person, who having been employed in the election might make a corrupt payment. I cannot think that a corrupt payment made by a person who has been merely a member of committee or a canvasser, and made after the election, and without the privity of the Member himself, could affect the Member.”

Mr. Baron MARTIN, in his judgment, declared the Respondents duly elected, but reprobated some of the practices resorted to on their behalf.

Hiring of
roughs.

With reference to the hiring of roughs, he said :—

“It was proved that, without the slightest ground, except upon the mere rumour that some of the Irish were expected to come and interfere with people going to the poll (or, according to another account, to protect a certain beershop from which voters were to be taken to the poll), twelve men, the leader of whom was a prize-fighter, were hired by an agent of the Respondents’ a few days before the polling day, and that as much as 18*l.* was altogether spent upon them by the authority of the Respondents’ agent. Their being employed at all is a thing very much to be reprobated.”

Rioting to
vitate an
election must
be such as to
prevent men
of ordinary
nerve from
voting, and it

As to an election being vitiated by reason of general rioting, he said :—

“Before an election can be vitiated by reason of general riot and violence, it must be shown to be such as to affect the freedom of election, which is that every person who has the franchise ought

be at liberty to go and have the means of going to the poll and giving his vote without obstruction, and without fear or intimidation. To set aside an election on the ground of general riot and violence, it must be established that persons possessing the ordinary nerve and courage of men have been prevented from going to the poll to record their votes. In this case, I think the allegation fails in proof; and I also think that the complaint fails on a technical ground, viz., that it is not alleged in this petition.*

must be so alleged in the petition.

As to the agency of one Kean, a publican, who was alleged to have been guilty of treating, he said he was of opinion that Kean was not an agent. "My view of the law would go quite as far as that of Mr. Justice Blackburn,† but the only evidence that I have is that his house was hired for what I consider an exorbitant sum; and that after that, by an arrangement between him and an agent of the Respondents, named Hall, some roughs were hired, but I am not of opinion that that constitutes any agency between Kean and the Respondents so as to affect their seats by his acts."

What is not enough to constitute agency.

As to paying for refreshments which had been ordered for a number of people, but afterwards countermanded, he said:—

"Mrs. Hulme was directed several days previous to the election to provide refreshment for a very considerable number of people, and she did so; but the person by whom the order was given was advised that it would be dangerous to allow so much refreshment to be given at a public-house, and thereupon he went and countermanded it. Mrs. Hulme sent in a bill, not in respect of the number of persons for whom refreshments had been ordered, but charging only the expenses which she had been put to in making provision for the entertainment: that is a very natural thing, and it is impossible to arrive at the conclusion that the paying of that money was corrupt. It was a reasonable act, and such as any person might do."

Not a corrupt act to pay money on account of refreshments which had been ordered but countermanded.

As to the case of one Moss, who was alleged to have corruptly paid a day's wages to persons in his employ, he said:—

"Mr. Moss was an active partizan and chairman of one of the committees of the Respondents; he had a number of men em-

What is not sufficient evidence to establish a corrupt payment of wages.

* Vide, ante, p. 64.

† *Seemle* in the Bewdley case, p. 17.

ployed in his mill, some of whom supported one set of candidates and others supported the other; he swore that he never interfered with them in regard to their votes, but upon the day of the election a number of his men were absent from their work. Mr. Moss did take the opportunity of employing several of them for the purpose of aiding him in the election. I cannot say that the payment on the following day (without any previous contract) of their ordinary day's wages at the mill to the men who voted for their master's candidates, would constitute corrupt payment."

Isolated case of bribery by agent, if the amount given is very small, does not affect an election.

As to bribery by an agent, when the sum given is very small, he said :—

"The whole of the money alleged to have been spent in bribes amounts to but 2s. 6d., and one would be sorry that bribery to the extent of 1s. to one man, and 1s. to another man, and a third, should upset an election; that would be a thing which seems to me, which would bring the law into ridicule, in a case where great expense was incurred I were to say that an imprudent man, and not the Member himself, gave 1s. to one man, and a 1s. to another, and 6d. to a third, that was to upset the election. I am now speaking of single isolated acts, I am not speaking of cumulated acts; if I were to upset an election by single acts such as these, and such sums as these, it seems to me that the law would be brought into contempt and ridicule."

Costs.

As to costs, he said :—

"I certainly think that costs ought not to be allowed in such a case."

CASE XX.

BOROUGH OF BEVERLEY.

BEFORE MR. BARON MARTIN, MARCH 9, 1869.

Petitioners: Messrs. Hind, Armstrong, and Dunnett.

Respondents: Sir Henry Edwards, Bart., Captain Kennard.

Counsel for the Petitioners: Mr. Serjeant Sargood, Mr. Waddy.

Agent: Mr. Hind.

Counsel for the Respondents: Mr. Serjeant Ballantine ; Mr. Giffard, Q.C. ;
Mr. Grove Edwards.

Agent: Mr. Bainton.

THE petition contained the usual allegations of bribery, &c.

It was proved that an extensive system of corruption by means of the misapplication of the funds of the charities of the town, including, particularly, Walker's Gift, and by bribery at the municipal elections, had been carried on for years, and that nearly one thousand voters had been corruptly influenced, with a view to the last election.

In the course of the case,

A witness, Herdman, examined for the Petitioners by Mr. Serjeant Sargood, proved that he had been a recipient in former years of Walker's Gift. He was asked whether he had made an application for a grant in 1867.

Mr. Giffard, for Respondents, objected to this on the ground that the witness's name was not in the list of persons alleged to have been bribed.

Proof of a system of corruption illustrated by particular cases not named in the lists of particulars.

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Mr. Serjeant *Sargood* said he had meant to prove that this man had himself been paid, but his name was not in the list, and therefore he would not give any individual act of receiving money, but would use him only as a witness giving general evidence on the subject.

The witness having further proved that he had been employed at the municipal election in 1867; that he had asked for 5s. for his vote; and that he had been referred to *Wrighitt*, who was Respondents' agent, was about to give evidence of what had been said to him, when

Mr. *Giffard* objected.

Mr. Baron MARTIN:—"I do not see any objection. I know from the Petitioners' opening that it is meant to show that there has been a system of appropriating this Walker's Gift to those who were not entitled to receive it. As I understand, it is not meant to show anything with regard to bribing individual men but merely that there was a general system of corrupt influence used by means of this gift for the purpose of affecting voters. It is not personal bribery at all."

Mr. *Giffard*:—"If it is bribery, the particulars have not been given. If it is not bribery, it is irrelevant."

Mr. Baron MARTIN:—"It is evidence of a general system of applying the money coming out of Walker's Gift for the purpose of influencing voters. It is clearly evidence."

Mr. *Giffard*:—"It would clearly be evidence if the particulars had been given."

Mr. Baron MARTIN:—"You do not want any particulars for that. If the order for particulars is the common one, it is the particulars of persons bribed, which means persons bribed at the election."

The order was read; it was as follows:—

"Upon hearing counsel on both sides, I do order that the Petitioners shall, three days before the time appointed for trial, leave with the Master, and also give the Respondents, or their agent particulars in writing of all persons, with numbers on registers alleged to have been bribed, of all persons alleged to have been treated, of all persons alleged to have been intimidated, of all persons alleged to have been conveyed to the poll or their expenses paid, and that no evidence shall be given by the Petitioners of ar

objection not specified in such particulars, except by leave of a Judge upon such terms, if any, as to amendment, postponement, or payment of costs as may be ordered ; and I further order that the Petitioners shall, within four days from this day, leave with the Master, and give the Respondents, particulars in writing of the nature of the corrupt or illegal practices charged in general terms in the petition, otherwise the Petitioners shall be restricted to the charges, the nature of which is specified in the petition ; and in the event of such particulars of the nature of the corrupt or illegal practices in the petition alleged in general terms, being given, the Petitioners shall three days before the day appointed for trial leave with the Master, and give the Respondent particulars of the person or persons alleged to have been affected thereby, subject to the same consideration as above provided in cases of bribery, or other specified charges."

Mr. Baron MARTIN :—" This man is not a person who is alleged to be bribed at the last election, or to have received anything for it. It is for the purpose of hearing, as was done in the Salford case, the general conduct at the election, and for the purpose of thereby affording evidence which may bear upon what was the general quality of the act which was done afterwards which may affect the election. It is like the hiring of cabs, like the hiring of roughs, like the hiring of public-houses, and having people there treating them. It is clearly admissible in evidence for the purpose of showing what possibly may be the quality of acts which do immediately affect the election. There is nothing in this to confine the evidence in the case simply to what has been done with respect to bribing any particular man ; but the Petitioners may give general evidence bearing upon the case, showing the real nature of the transaction here."

Mr. Giffard suggested that the last branch of the order pointed out that the Petitioner must, in order to be entitled to give this evidence, have given particulars specifying those individual acts and the names of the persons whom he alleges to be corruptly influenced.

Mr. Baron MARTIN :—" I do not think that is at all necessary."

A witness was examined for the Petitioners, to prove that he was a freeman and voter, and that in 1867 money had been

Payment for
admission of
freemen a year

before an elec-
tion not
bribery.

17 & 18 Vict.
c. 102, s. 36.

supplied to him by the Respondents' agent, Wrihitt, in order enable him to take up his freedom.

Mr. Baron MARTIN said his impression was that this would do. Bribery to affect the seat must, in his judgment, be at election.

Serjeant *Sargood*, for the Petitioners, quoted "Rogers Elections," (1865 ed.), p. 323. "Payments for admission of men and of rates for the purpose of enabling a voter to registered, which have always been regarded with suspicion, now be strictly within the statute"—(17 & 18 Vict. c. 102).

Mr. Baron MARTIN said that which vacates the seat is operation of 17 & 18 Vict. c. 102, which provides for the where the candidate should be "guilty of bribery at election." He thought it would be impossible to carry back to 1867, when an immediate election was not in con-
plation.

The passage in "Rogers on Elections" being again referred

Mr. *Giffard*, for the Respondent, said he thought it referred to the payment of rates, and

Baron MARTIN concurred in that opinion.

Witness not in
list of parti-
culars may be
called to prove
bribery.

Seat how
affected by
such evidence.

Upon a witness, Thomas Duffill, being called by Serjeant good, for the Petitioners,

Serjeant *Ballantine*, for the Respondent, objected that name was not in the particulars.

Serjeant *Sargood* said:—"He and others who are in particulars are prepared to be called and depose to a certain of facts which happened at the municipal election. I do not Duffill's case as one of individual bribery, but I call him to general evidence of that day to corroborate others. I take first merely for convenience."

Serjeant *Ballantine*:—"I take it for granted that the value of this evidence is to show that a bribe was given."

Mr. Baron MARTIN:—"As I understand, Serjeant Sargo going to prove the bribes given to others who are in particulars. If this case was to govern the whole concern, the election depended upon it, inasmuch as the man's name not in the particulars, a bribe given to him, assuming that

was one, could not affect it, but he is competent to be a witness to prove a bribe given to others, or indeed, to himself, but it could not affect the seat if it depended upon him alone. As I understand, Serjeant Sargood intends to prove that this man accompanied some others, whose names are in the particulars, and he in company with them received a bribe. The particular is not to limit the witnesses who are called, but merely to limit the acts which are relied upon for the purpose of unseating the Respondent."

A witness, Richard Norfolk, called by Mr. Giffard, for the Respondent, asked before giving his evidence whether he was required to answer all questions put to him.

Indemnity of
witness, 26
Vict. c. 29,
s. 7.

Mr. Baron MARTIN said:—"The statute (26 Vict. c. 29, s. 7) provides that 'no person who is called as a witness in a case like this shall be excused from answering any question relating to any corrupt practice at or connected with any election forming the subject of the inquiry on the ground that the answer thereto may tend to criminate himself;' and therefore you cannot refuse to answer any question relating to a corrupt practice connected with the borough election in this place; then it is provided that 'where a witness shall answer every question relating to the matter as to which he shall be required to answer, and the answers to which may criminate or tend to criminate him, he shall be entitled to receive' (now it will be from the Judge) 'a certificate stating that the witness was upon his examination required by the Judge to answer questions relating to the matters aforesaid; and if in consequence of the answers given to such questions any information or indictment or action be brought against him, the certificate of the Judge will protect him.' You will be protected in answering questions relating to the borough election."

Mr. Baron MARTIN delivered judgment, declaring the Respondents unseated, and the election void at common law, by reason of general bribery which had taken place.

As to the effect of general corruption avoiding an election at common law, he said:—

"A man giving a vote for a Member of Parliament under what the law deems undue influence gives no vote at all. This is the

Election void
by common
law; general
corruption.

common law ; it depends upon no statute, and it is a consequence of it that if the Judge is satisfied that the votes of a considerable number of persons were corrupted and bribed, however innocent the candidate may be, and though himself unconnected with corrupt practices, his election is void by reason of the incapacity of the voters because of general corruption to give valid and effective votes."

The facts are these :—The Respondent Sir H. Edwards is chairman of a company called the Beverley Waggon Company (Limited). The manager is Mr. Norfolk. Mr. Wreghitt has been the agent of the Respondent Edwards for the last twelve years. At the commencement of that time the Town Council was a mixed constitution of Conservatives and Liberals. Since then there has been bribery in every municipal election where a contest has taken place. The amount spent has averaged from 50*l.* to 70*l.* a year, and upon the contested elections from 130*l.* to 140*l.* There has been systematic bribery at the elections of the Town Council for the twelve years during which Wreghitt has acted as agent for Respondent Edwards. That body is now substantially of one political party, and is wholly in the hands of the party to which Mr. Wreghitt and the Respondents belong.

"The freemen of this town have a large quantity of land in which they are entitled to rights of pasture. Their rights are regulated by an Act of Parliament, the effect of which is that there are to be annually chosen twelve persons, called pasture masters. These pasture-masters employ tradesmen and labourers to a considerable amount. The annual income is 940*l.* From the time Mr. Wreghitt has acted in this borough bribery has been made use of at every election of these pasture-masters, and the effect has been that the whole of them are now of the one political party. They formerly were six and six. These pasture-masters, under the will of one Walker, have the distribution of the interest of 1400 railway stock. It is 'to be divided amongst such poor freemen of the borough or their widows or sons as may require the same, by reason of losses that they may have sustained by the death of the horses and cattle, to enable them to purchase stock or carts or necessary things of a like nature to help them on in the world and it is declared to be the wish and intention of Walker 'that

such payments and assistance should be made in such substantial sums as would effect the object that he had in view, and that they should not be given in any smaller amount, so as to embrace a greater number of objects.' Last year the gift, instead of being distributed in considerable sums, was distributed in a number of small sums. It extended over a great number of persons. Thirty-three of them had votes, and of those twenty-six voted for the Respondents at the last election. If this were all, there would be in this borough bribing at the municipal elections, and as a result of such avowed and open corruption the whole of the body substantially merged in one political party; there would be the pasture-masters elected in the same way by bribery and corruption, and the money distributed as stated. This of itself would be a matter that would tell much in the consideration of the present question. But that is not all.

"It was known in the summer that the general election would take place some time in November. The municipal election was held on the 2nd November, and the other was imminent, and took place a fortnight after.

"Upon the Saturday before the municipal election and on the Monday, the day of it, Mr. Norfolk obtained 800*l.* on credit from the bank, and gave it for the purpose of being distributed in bribery to persons named, several of whom accompanied the Respondents on their canvass, and all of whom were active supporters of Sir H. Edwards. The highest sum known to have been spent at any previous municipal election for the purposes of bribery was from 120*l.* to 130*l.*, but upon Monday, November 2 last, a fortnight before the Parliamentary election, 800*l.* were spent in bribery by these men. The municipal election was decided in the early part of the day. After that was done, man after man was bribed with sums varying from 1*l.* to 15*s.*, while the ordinary bribe at municipal elections did not exceed 5*s.* Mr. Norfolk proved that the 800*l.* was so spent.

"Nearly 1000 persons—at least 800—probably of a low class of life, were thus bribed, there being 2600 voters in the borough, and nearly the same persons voting for the municipal and the borough elections. Thus on the Monday fortnight before the borough election 800*l.* had been distributed substantially among the people

who were about to vote at it by members of the Conservative party, many of whom accompanied the Respondents in their canvass. Some of the bribees were told that the money was for the double event. The conclusion I come to is, that this money was expended in bribery for the purpose of influencing the borough election as well as the municipal, and that it was to such an extent as to be general ; and that by the common law an election effected by such means was vicious from the commencement."

Costs.

Costs will follow the event.

CASE XXI.

BOROUGH OF OLDHAM.

BEFORE MR. JUSTICE BLACKBURN, MARCH 16, 1869.



Petitioners: Messrs. Cobbett and others.

Respondents: Messrs. Hibbert and Platt.

Counsel for the Petitioners: Mr. Rodwell, Q.C. ; Mr. Higgin, Q.C. ; Mr. Leresche.

Agents: Messrs. Johnson and Wetherall.

Counsel for the Respondents: Mr. Edwards and Mr. Herschell.

Agent: Mr. R. H. Wyatt.

THE petition prayed the seat on a scrutiny for Mr. Cobbett and Serjeant Spinks.

Mr. Rodwell, in opening the Petitioners' case, stated that the numbers polled by the respective candidates were—

Hibbert,	.	.	.	.	6140
Platt,	.	.	.	.	6122
Cobbett,	.	.	.	.	6116
Spinks,	.	.	.	.	6084

He suggested that the simplest course would be to proceed in the first instance with the scrutiny as between Cobbett and Platt, and that when they had placed Cobbett in a majority over Platt, they should then proceed with the case as between Spinks and Hibbert.

Mr. Justice BLACKBURN assented to that course as being a convenient one.

Mr. *Rodwell* then stated the various classes of objections votes which he proposed to bring forward, and the scrutiny commenced.

In the course of the case,

Misnomer.

It appeared from the poll-book that a certain house was stated to be occupied by William Brown. In reality it was occupied by Thomas Brown, but he was seldom at home, and the rent and taxes were always paid by his wife. He had a son named William Brown, who lived with him, but had nothing to do with the taking of the house, and was in no way responsible for the result. Thomas Brown finding he had been by mistake entered on the register as William, voted under that name for Hibbert and Platt.

Mr. Justice BLACKBURN said this was no case of personation but merely a misnomer; and the vote was good.

Personation.

It appeared that a voter, Joseph Jackson, who lived in Drury Lane, and who was described in the register as of Drury Lane, tendered his vote for Cobbett and Spinks, and was told that there was but one Joseph Jackson in Drury Lane, and that he had already voted. The vote thus tendered was taken down as an invalid tendered vote, and by mistake made up in the total for Cobbett and Spinks.

It appeared that besides the Joseph Jackson, who was on the overseer's list as of Drury Lane, there was another Joseph Jackson on the list of claimants claiming for Under Lane. This Joseph Jackson's claim had been disallowed on the ground of insufficient residence, but in spite of that he had voted instead of his name. The vote which he had thus given for Hibbert and Platt was struck off, and the other vote retained.

Personation.

It appeared that there were two William Rothwells, and that the claim of one had been disallowed by the revising barrister; the other, however, had voted for Hibbert and Platt, and consequently the vote of the other, when tendered for Cobbett and Spinks, was not received.

The vote given for Hibbert and Platt was struck off, and the vote tendered for Cobbett and Spinks was added on.

It was proved that Henry Horsfall voted for Hibbert and Platt. Misnomer.
There was no other man of the name of Horsfall in the town. He had not sent in a claim. The list was referred to, and the claim of Henry Horsfall was there stated to have been disallowed, and that of William Horsfall admitted. Held a misnomer, and the vote good.

There appeared on the register the following name: John Wolstencroft, of 3, Lion Dam Street. Nature of qualification, 8, Warwick Street, and 3, Lion Dam Street. It appeared that John Wolstencroft, senior, had lived at 3, Lion Dam Street for twenty years, and always paid rent and rates regularly. Two months before the election his son John Wolstencroft, junior, came to live with him. The son had previously lived at 58, Warwick Street, but he gave up that house on coming to live with his father. John Wolstencroft, senior, had been objected to before the Revising Barrister, but the objection had been withdrawn. John Wolstencroft, junior, voted early for Hibbert and Platt; when John Wolstencroft, senior, went and tendered his vote for Cobbett and Spinks, he was told that some one had voted in his name before. Where two men of same name. Real owner of qualification votes.

Held, that the father's vote should stand, and the son's vote be struck off.

It appeared that a person, whose real name was Bradshaw, had been entered on the register as William Mills; he appeared in the rate-books for '67 and '68 as William Mills, but in the rate-book of '69 he appeared under his own name of Bradshaw. Vote not vitiated by voter being entered in a wrong name if identity established.

Mr. Justice BLACKBURN :—"If the person on the register was called by a wrong name, that does not vitiate the vote. It certainly creates a little difficulty in the identity, but it does not annul the vote if he was the occupier of the premises, and the man who was intended to be described." Vote held good.

William Warburton, described on the register as of 29, Moorhey Misdescription;

altered name
of street.

Street, proved that he lived at 29, Gartside Street, and had been in the same house for five years. The house had formerly, with some others, been called Pleasant View: and Warburt was rated on the rate-book for Pleasant View. It was proved that Pleasant View was in Moorhey Street, but that in November 1868, the name was altered to Gartside Street.

Mr. Justice BLACKBURN said this was a mere case of description; the material question in these cases was not whether the description was strictly accurate or not, but whether it was the man who was intended to be on the register.

Judge will
correct a
clerical error
as to a number
in the poll-
book.

(2) 2.

There appeared in the poll-book two Robert Lees, both numbered 892; one stated that he voted for Cobbett and Spink, the other for Hibbert and Platt. It turned out that one of them had been numbered 893.

Mr. Justice BLACKBURN said it appeared that there had been a clerical error, and ruled that both votes should stand.

What objec-
tions must be
raised before
revising
barrister.

Upon Mr. *Rodwell* proposing to object to voters on the ground that they did not occupy the premises in respect of which they voted, but that other persons occupied, were rated for, and had voted in respect of these premises,

Mr. Justice BLACKBURN asked:—"In what respect do they differ from personation?"

Mr. *Rodwell*:—"It is not where one man is personated by another, but where it appears on the register that two persons are registered in respect of one and the same house. I propose to show that the person objected to has left the place for years, and that there was no pretence whatever for his being on the register."

Mr. Justice BLACKBURN:—"How can you enter upon this unless there has been an express decision of the Revising Barrister? My present impression is, that if a man has got on to the list, and no objection being raised before the Revising Barrister, he cannot interfere if he is the person who is meant to be described on the register. The only inquiry I can make is this: Is the man who voted the same man who is described on the register, and if he is, I cannot go further into the matter. If there

uch a man, that is a different thing. Is the voter to whom you object the person described on the register? If he is I cannot go any further into the case. If you can shew that he is not, then the vote will be bad."

It appeared that one Firth, whose name was on the register, had been objected to before the Revising Barrister. It was proved that the objection then taken was as to the spelling of his name, but it was not proved that he had been objected to on any other ground. It was, however, sought now on the part of the Petitioners to take an objection to him on the ground that he had no sufficient qualification as occupier.

If voter objected to at all before the Barrister, any other objection may be taken as to his vote before the election judge.
(5) 17.

Mr. *Herschell*, for the Respondents, submitted that there had not been an express decision of the Barrister, within the meaning of the 6 & 7 Vict. c. 18, s. 98, as to the sufficiency of the qualification as occupier, and that therefore that objection could not now be gone into; the only objection that could be gone into was that taken before the Barrister.

Mr. Justice BLACKBURN:—"I am afraid I do not see my way to refuse to enter into the general question of his right to vote. It would have been more convenient if the legislature had expressly enacted that we should only enter into points expressly raised before the Barrister, but the question is whether really on the words of the Act it amounts to that. The point is one well fitted for the Court of Common Pleas."

The vote of John Wild of Besom hill was objected to. It appeared that there were two John Wilds, one living at Besom hill, and another at Sholver fold.

Mistakes as to qualification if not objected to before revising barrister cannot be entertained.

Wild of Sholver fold, who had paid his rates, went to vote, when he found that the other had voted for his qualification.

Wild of Besom hill had not paid his rates, but upon Wild of Sholver fold paying his rates they were by mistake put down to the name of Wild of Besom hill instead of to his, so that on the rate-book it appeared that Wild of Besom hill had paid his rates. The Besom hill Wild had thus got the credit of the rates paid by the Sholver fold Wild, and the Besom hill Wild was thus qualified to vote and voted, whilst the Sholver fold Wild

could not, owing to his not being on the register, having apparently failed to pay his rates.

On Mr. *Rodwell* proposing to give proof of this,

Mr. Justice BLACKBURN said that this mistake ought to have been proved before the Revising Barrister, and that it could not now be entertained.

The vote was retained.

Vote of voter struck off by mistake of Revising Barrister will be counted if tendered.

It appeared that Earnest Ogden had gone before the Revising Barrister to support his vote, but that it had been struck off for no apparent reason, he being in every way qualified to vote. He had tendered his vote for Cobbett and Spinks, but it had not been counted.

Mr. Justice BLACKBURN said he should infer that the decision in striking off the name was clearly an error; he should therefore hold this to be a good vote for the Petitioners.

Service of notice of objection, necessary.

It appeared that a voter Lees had never been served with notice of objection, but had been struck off the list by the Revising Barrister; he had tendered his vote for Cobbett and Spinks, but it had not been counted.

Held that the vote must be counted.

If voter after notice of objection receives notice of withdrawal of objection, validity of vote cannot be gone into before election judge.

It appeared that James Hestor had been served with notice of objection to his vote before the Revising Barrister; he had afterwards received a notice of withdrawal of the objection. Upon the Petitioners seeking to go into the validity of his vote,

Mr. Justice BLACKBURN said he must refuse to entertain this objection, as it was not a case of express decision of the Barrister.

If name is twice entered, though differently spelt, and a vote given for each entry, one vote must be struck off.

(8) 103.

The name of John Jinks, 14, Charlotte Street, appeared twice in the register, once spelt with a J and once with G. It was proved that only one John Jinks existed, and that he spelt his name with a J. A vote, however, had been given for each John Jinks.

Mr. Justice BLACKBURN ruled that the vote given in the name of Ginks spelt with a G must be struck off.

It appeared that a voter, Richard Harper, had been objected to before the Revising Barrister, but had not appeared at all. Consequently his name was struck off the list. He had tendered his vote for Cobbett and Spinks, but it had not been counted.

Mr. *Edwards*, for the Respondents, submitted that if a person was objected to he was bound to appear and support his vote, and that being struck off for non-appearance did not amount to an "express decision" of the Revising Barrister within the meaning of the 6 & 7 Vict. c. 18, s. 98.

Seemle, that non-appearance before Revising Barrister, and being there-upon struck off upon objection, is an express decision within 6 & 7 Vict. c. 18, s. 98.

Mr. Justice BLACKBURN ruled that the vote should be added, but he would reserve the point for the Court of Common Pleas.

The vote of Ralph Houlgrave had been objected to on the ground that he had not been an occupier twelve months before the revision.

It appeared that Houlgrave had sworn before the Revising Barrister that he had been married twelve months, and had occupied 30, York Street, for those twelve months; but the witnesses who were now called for the Petitioner swore that in reality he had only occupied the house eleven months. Houlgrave himself did not appear.

Vote will be struck off if *prima facie* case of non-residence is not rebutted.

Mr. Justice BLACKBURN:—"This is a *prima facie* case that he was not an occupier resident for twelve months, and the onus of proof now rests upon the Respondents."

No refutation being forthcoming, the vote was struck off.

It appeared that William Owen had been resident in the borough until shortly before the election; his qualification was a house under 10*l.*; consequently he had been put upon the register for the first time under the Representation of the People Act, 1867: he had voted for the Respondents.

Residence after registration. Voters enfranchised by 30 & 31 Vict. c. 102.

Mr. *Edwards* submitted that under the new franchise residence after the time of registration was not necessary. If a person was once properly on the register he was entitled to vote at the next election whether or not he was residing in the borough at the time of the election.

Mr. Justice BLACKBURN, however, ruled that the provision of the former Act, 6 Vict. c. 18, as to residence was continued in the new Act, and therefore that this vote must be struck off.

Change of residence.
What rates must be paid.
Notice of rates in arrear.

It appeared that Daniel Wild had lived during the first part of the year ending in the previous July in Lees Road. In February he had moved to another house in the town; he had paid the whole of his rates for his house in Lees Road, but had not as yet paid his rates for his new house.

Mr. *Herschell* referred to *Boodle v. Fletcher*, 34 L. J. C. P. 11, in support of the vote.

The vote was held good.

Another voter, Daniel Cooper, had changed his residence in a similar way in the November previous to the registration, and although he had paid all the rates due from him in respect of his new residence, he had not paid in respect of his former residence a rate made in the October before he left.

Mr. *Herschell*, for the Respondents, submitted that by section 28 of the Representation of the People Act, 1867, notice of rates in arrear should be given by the overseer to the voter.

Mr. Justice BLACKBURN:—"But this is an October rate; and the section only deals with the rate due in January."

Mr. *Herschell* submitted that the same rule should be taken to apply to both rates.

Mr. Justice BLACKBURN ruled otherwise.

The vote was struck off.

Occasionally sleeping in a house not sufficient residence to give a vote.

It appeared that John Baxter kept a public-house in the town but he had a house in the country where he usually slept. Occasionally, however, he slept at his public-house, and there was a bed kept there for him; he had voted for the Respondents.

Mr. Justice BLACKBURN said that the vote must be struck off in accordance with the last decision on the point in the Court of Queen's Bench, where it was held that a man's residence was where he habitually slept.*

Residence of voter partly within the distance of seven miles from boundary of borough.

The vote of one Radcliffe was objected to on the ground that he did not reside within the statutory seven miles. A survey stated that he had measured the distance from the boundary of the borough to Radcliffe's house, and found that the centre of the house, which was a very large one, was not within the seven

* R. v. Overseers of Norwood, L. R. 2 Q. B. 457.

miles, but the outside of the house on the side nearest the borough was 20 feet within the seven miles. The outside farthest from the borough was 30 or 40 feet beyond the seven miles.

Seemle, vote good.
3 (155).

Radcliffe proved that he slept in a room about the centre of the house, but that his rooms for entertainment were on the side of the house nearest to the borough and clearly within the boundary.

Mr. Justice BLACKBURN reserved his decision in the case until the event of its becoming material, the vote in the meantime being considered good.

With regard to striking off the votes of minors, aliens, and women,

Mr. Justice BLACKBURN held that infants and aliens, being men subject to a legal incapacity, could not be struck off unless an objection to them had been first taken before the Revising Barrister; but that women, not being men at all, were in a different position; their votes, therefore, might be struck off, but that if it came to a question of one vote, he would reserve this point for the Court of Common Pleas.

Minors and aliens not to be struck off unless objected to before Revising Barrister; *aliter*, women. (4) 143.

In the case of some voters who had received parochial relief after the time of the registration, Mr. *Herschell* contended that such a receipt would not be an objection to their votes.

Receipt of parochial relief after July 31 and after registration.

Mr. *Rodwell* contended that it would.

Mr. Justice BLACKBURN said he had almost taken it for granted that parochial relief after July 31 annulled the vote. If any decision could be cited to the contrary, he would reserve the question; otherwise he would hold such votes bad. The nearer the time of receiving relief was to the time of the election the stronger was the disqualification. The votes were struck off.

The vote of William Shaughnessy was objected to on the ground that he had received relief two days after the election was over.

Parochial relief given after election does not vitiate vote.

Mr. Justice BLACKBURN:—"The vote which was on the 17th would not be vitiated by relief received on the 19th."

(5) 127.

It appeared that parochial relief had been received by the

Parochial relief given to

parents of
voter does not
vitiate vote.

(5) 132.

mother of one Scholfield, and by the father of one M^r They were both voters who had voted.

Mr. Justice BLACKBURN said that relief given to parents not the same as relief given to wife or children, and that it did not vitiate their votes.

Medical relief.
Effect of on
vote.

It appeared that medical relief had been ordered by the medical officer for the child of a voter, Thomas Mannock.

Mr. *Edwards*, for the Respondents, submitted that this was such a receipt of alms as would disqualify a man from voting.

Mr. Justice BLACKBURN :—"It is of just as much expense to the parish as any other sort of relief. The vote must be retained."

Deaf and dumb
child of voter
maintained by
parish at deaf
and dumb
school does not
invalidate vote.
(5) 154.

It appeared that the child of a voter, Smithys, was deaf and dumb. It was maintained at a deaf and dumb school at Chester out of the funds of the guardians of the union for that purpose. It had been at the school for five or six years. The father had voted for the Respondents.

Mr. *Edwards*, for the Respondents, submitted that relief given to a deaf, dumb, or blind child of a voter was excepted from the ordinary rule.

The vote was retained.

Medical relief
ordered by the
police authorities,
and paid for by the
county, does
not invalidate
vote.
(5) 165.

It appeared that a voter, Madden, had been attended gratis by a doctor in consequence of an assault committed on him by two persons who were tried and convicted for the offence. The doctor's fees were paid by the county.

Mr. Justice BLACKBURN said that this was not parish relief, but police relief given by those who conducted the prosecution. The vote was therefore good.

Relief of
grandchild of
voter does not
invalidate vote.

The vote of Samuel Kirk was objected to on the ground that parochial relief had been given to his grandchild, who lived with him.

Mr. Justice BLACKBURN said that as there was no interpretation clause to the statute (5 & 6 W. 4, c. 76), he should hold that it did not include grandchild. The vote was held good.

red that a voter, Whatmough, had had a coffin supplied the parish to bury one of his children in. He had Cobbett and Spinks.

Providing coffin is parochial relief.

gin, in support of the vote, called attention to the the Poor-Law Board as to giving a coffin to a person bury a corpse.

Justice BLACKBURN held that it was clearly a form of relief, and the vote was struck off.

red that a voter, Joshua Smith, had an order given him month before the election by the relieving officer for a dues to bury his wife, under the promise that he would by instalments of so much a week. It had all been not until after the election.

Loan by relieving officer does not invalidate vote.
4 & 5 Will. 4, c. 76, s. 58.
(5) 169.

schell submitted that by 4 & 5 W. 4, c. 76, s. 58, any relief loan, with or without an engagement to repay, was to be as a loan.

sche cited decisions of committees against that view.

Justice BLACKBURN decided not to strike off the vote, but a point to be reserved for the Court of Common Pleas.

red that James Barnes had intended to vote for Cobbett but in consequence of John Hadfield, his employer's to him that if he did so he must stand the consequences he understood that he would be dismissed if he did so), or Hibbert and Platt.

Vote given under intimidation must be struck off, but vote that voter would otherwise have given may not be added.
(6) 125.

submitted by Mr. *Rodwell* that upon this evidence a d be struck off from Hibbert and one added for Cobbett, the vote of the intimidator, John Hadfield, should be

Justice BLACKBURN said that a vote must be struck off bert, but that he could not order a vote to be added tt. The question of John Hadfield's vote might be

ared that a voter, Dyson, intended to vote for Cobbett as. On the polling-day one Lees came to him with a his hand, which Lees stated came from Dyson's master

Vote obtained by intimidation bad, whether threat

can be carried
out or not.
(6) 149.

and contained these words, "Those who don't vote the way their master wishes them will be discharged." Yielding to this, Dyson went and voted for Hibbert and Platt. There was no evidence to show that the note was genuine, as Dyson did not see it himself.

Mr. *Herschell* submitted that if intimidation was done in the name of a person without his knowledge or authority, the vote ought not to be invalidated.

Mr. Justice BLACKBURN held that a vote obtained by intimidation was bad, whether the person using the threat had the power to carry it out or not. If a man held a pistol at another's head, and said he would kill him if he did not give up his money, that would be intimidation, although the pistol was not loaded. The question was whether the man's vote was influenced in such a manner by the representation made to him, that he gave it under protest.

The vote was struck off, Mr. Justice Blackburn refusing to reserve the point.

Payment of
day's wages to
voter vitiates
vote.

It appeared that one Foran, a labourer, refused to go up and vote unless he got paid his fare and his day's wages; whereupon one Pardy paid him 5s. for his day's wages, and 2s. 6d. for his fare he then went and voted. The vote was struck off.

If voter states
that his vote
has been
wrongly
recorded for
Respondents,
onus on Re-
spondents to
show that there
has not been a
mistake.

Edmund Mellor said that he had voted for Cobbett, but it appeared that his vote had been recorded for Hibbert.

Mr. Justice BLACKBURN :—"Poll-clerks are not infallible. There may have been a mistake, and it is now for the Respondents to show that there has not been."

On their failing to do this, the vote was struck off from Hibbert's numbers, and added to those of Cobbett.

For whom
voter at the
poll said he
voted is a ques-
tion of fact to
be determined
by the judge.
(5) 87.

It appeared that Peter Whittle suffered from shortness of breath. In answer to the question put to him by the poll-clerk as to whom he voted for, he said "Spinks;" and then after a short pause, but without turning away, he added, "and Cobbett." The vote for Spinks only was recorded.

Mr. Justice BLACKBURN :—"It is a question of fact whether he had completed rendering his vote, and the question is whether

imperfect rendering of the vote. But upon the evidence as, I do not see why I should not add the vote." He was accordingly added for Cobbett.

It appeared that James Chatham, in answer to the question as he voted for, said "Platt and Hibbert," but he immediately corrected himself, and said, "Hold! for Cobbett and Hibbert." The clerk, however, had entered it for Platt and Hibbert, and it was too late.

Mistake may be corrected before voting completed.

Justice BLACKBURN thought that the voting was not complete when the mistake was corrected, and consequently ordered that one be added to Cobbett, and one struck off from Platt.

It appeared that James Scholefield (1) tendered his vote at the wrong booth for the Respondents, but he was told that he had done so before. James Scholefield (2) had tendered his vote at the wrong booth (which was not the right one for him to vote at) for Cobbett and Spinks, and it had been recorded.

Vote given at wrong booth.

The clerk, for the Respondents, said:—"Both the Scholefields attempted to vote, but the vote recorded for Cobbett and Spinks was tendered at the wrong booth, and is bad; that for the Respondents was tendered at the right booth, and is good."

Justice BLACKBURN, in support of the vote for Cobbett and Spinks, referred to the Cambridge case (Wolferstan and Dew, p. 55), where it was held that a vote was not invalid by reason of its being recorded at the wrong booth.

Justice BLACKBURN, however, pointed out that by 2 Will. 4, c. 45, relating to boroughs, no person should be admitted to vote except at the booth allotted for the district wherein his place of abode was.

Justice BLACKBURN said:—"The prohibition in the section referred to is directed to the poll-clerk, and it says you shall not do such and such, but it does not extend to the voter. If the poll-clerk has made a mistake, the voter ought not to suffer."

Justice BLACKBURN said:—"I hardly think this comes under the Cambridge case. It simply comes to this, the poll-clerk should not have recorded the vote, and the voter should have gone to the right booth. It is not at all an intentional mistake, it was the

fault of the voter as well as the poll-clerk. I shall at present strike off the vote for Cobbett and Spinks; but should this or vote turn the scale, I will reserve the point for the Court Common Pleas."

Corrupt payment of rates.
¶ 63.

It appeared that one Grandridge, on being asked by Michael Smith whether he intended to pay his rates, said that he could not afford to do so. Smith then asked him for his rate paper, and Grandridge gave it to Smith; shortly afterwards it was returned to him receipted. Smith, when called, said that he had paid the rate for Grandridge, but that he had done so merely as a friend, and because Grandridge had said he was anxious to get on the register, but that he could not afford to pay the rates himself. He had never said anything to Grandridge about how he should vote at the next election; but he believed Grandridge was a Liberal, and therefore he wished to get him on the register. Grandridge had voted for the Respondents. Upon these facts,

Mr. *Edwards*, for the Respondents, submitted that there was no evidence that this rate had been paid corruptly within the meaning of the 49th section of the Representation of the People Act, 1867.

Mr. Justice BLACKBURN said :—" I do not think I can consider this case is brought within the 49th section of the Act. That section says that 'any person either directly or indirectly corruptly paying any rate on behalf of any ratepayer, for the purpose of enabling him to be registered as a voter, and thereby to influence his vote at any future election, is guilty of bribery,' and then it says afterwards that the man for whom the rate is paid if it is paid with his privity, shall also be guilty of bribery, and punishable accordingly. The present question is whether or not the payment was made under such circumstances as to make both payer and payee guilty of bribery. If the Legislature meant the clause to apply to such a case as this, it would no doubt be a question afterwards for those trying the case as a criminal offence to say whether it was one for severe punishment. But in a case which involved the criminality of one or more persons, I must consider that I am construing this section as I should do if I were leaving the question for a jury in a trial of these persons for the misdemeanor of bribery. Now I do not entertain any doubt that both

Michael Smith and Grandridge knew that the rate was paid in order that Grandridge might be enabled to be registered, and that they both knew that the actuating motive in Michael Smith's mind was that he expected thereby that Grandridge's vote would be given for his own party, that is, for the Respondents. It is true that the candidates were not exactly in the field, but it was well known in July that there was to be an election soon. But then this difficulty arises; the Legislature is not content to say, as it might have said, that a person paying a rate for another for the purpose of enabling him to be registered, shall be guilty of bribery, but they thought it necessary to guard it by saying, 'Provided he does it corruptly, and thereby to influence the vote at any future election.' Now, in construing an Act of this sort, where the word 'corruptly' is used, it is sufficient to show that an act is done with the intention of influencing a voter; that is a corrupt act. 'Corruptly' means, according to the Act of Parliament, an act done with intention, and the object which the Legislature had in view was to prevent the doing of any acts with the intention of influencing voters; and if I thought this rate was paid in order to influence Grandridge's vote at any future election, I should hold that that act was corrupt. Now, what does 'thereby influencing' mean? Is it where a man pays another's rate for the purpose of enabling him to be put upon the register, knowing that if the payee has a vote he will give it for the particular side on which his (the payer's) sympathies lie? I think if the Legislature had taken as wide a view as that, they would simply have forbid the payment of rates. It appears to me that what they must have had in view was to forbid the payment of rates where the intention was to obtain an influence over the voter; their object was analogous to that which induced them to prohibit the giving of meat and drink to voters on the polling-day, but not to prohibit giving refreshment for those who were engaged in the election. What they prohibited was the payment of any rates for the purpose of acquiring an influence over the voters. Such a case might arise, for example, in the formation of a society for the purpose of paying the rates of all persons who were unable to pay their own rates; and if it should be proved as a matter of fact that such payments were made for the purpose of acquiring an in-

fluence over voters, I do not know but I should hold the
 It may be that there will be more danger in the case of i
 influence, as in this case, than in the action of a society
 in the latter case the proof would be far more readily
 But in the present case I do not entertain the slightest d
 the object in paying Grandridge's rates was to put hi
 register, and the motive to do that was that he would vot
 ing to what was known to be his own views in politics.
 think that that comes necessarily within the meaning of tl
 the payment had been made in such a way as to make
 it was to require him to vote a particular way, or to gi
 of complaint against him if he voted another way, I sh
 that the payment was corrupt. But the contrary has be
 It is difficult to construe a new statute, but if any o
 struction were to be put upon this section, it would be
 the criminal law, and making a man criminally liable in
 ment for misdemeanor for matters which had certainly
 before indictable. The consequence of my view is, that
 has not been made out to be bad, and therefore I sustain

Mr. *Rodwell* applied that the point should be reserv
 Court of Common Pleas, but the Judge refused.

At the close of the fifth day of the inquiry, the Petiti
 having brought forward 190 cases, had succeeded in 48, whi
 Respondents, having brought forward 72, had been success
 42. At the close of the sixth day, the Petitioners had
 exhausted the original lists of objections, and Messrs. Plat
 Cobbett were still upon an equality. On the following mo
 Mr. Rodwell stated that the Petitioners would make an adm
 with reference to one vote, so as to put Platt in a majority
 would withdraw from the inquiry.

Costs.

With reference to costs, Mr. *Rodwell* suggested that as th
 the first case of a scrutiny under the new procedure, Mr. J
 Blackburn should consult with the other election Judges
 giving his decision.

Mr. Justice BLACKBURN assented to this course, and it wa
 sequently decided that the Petitioners should pay the costs o
 whole inquiry.

CASE XXII.

BOROUGH OF NORTHALLERTON.

BEFORE MR. JUSTICE WILLES, APRIL 12, 1869.

Petitioner: Mr. J. W. Johns.

Respondent: Mr. Hutton.

Counsel for Petitioner: Mr. Serjeant O'Brien and Mr. Hugh Shield.

Agent: Mr. Trevor.

Counsel for Respondent: Mr. O'Malley, Q.C., Mr. Serjeant Sleigh,
Mr. Trotter.

Agent: Mr. Trotter.

THE petition contained the usual allegations as to bribery, &c., and prayed the seat on a scrutiny for the Petitioner.

The charges of corruption failed altogether, and upon the scrutiny the Petitioner failed to upset the Respondent's majority. The numbers polled were—

Hutton	.	.	.	.	.	386
Johns	.	.	.	.	.	372

In opening the Petitioner's case, Serjeant *O'Brien* said he should prove that several voters had had their railway fares paid by the Respondent after they had voted, and he submitted that that amounted to bribery.

Mr. Justice WILLES said:—"No doubt if a promise were given beforehand that the fares would be paid, it would be bribery. I do not know, however, that paying afterwards without

Payment of travelling expenses after poll without previous promise not bribery.

any previous promise would amount to bribery. This is a point, believe, that has yet to be decided."

In the course of the case,

Intimidation to threaten to give up pew in dissenting chapel.

Evidence was given to prove that two persons had threatened one Stubbings, a Baptist minister, that they would give up their pews in his chapel if he, Stubbings, voted as he wished to do.

Mr. Justice WILLES, in his judgment, said as to this:—"If agency had been proved I should have held it to be a case of intimidation within the 5th section of the Corrupt Practices Prevention Act, 1854."

In the course of the scrutiny, it was submitted that the votes of the two persons who had threatened Stubbings ought to be struck off.

Mr. Justice WILLES said he would put a query to their names, but that he would not decide the question until it became necessary to do so.

Offer of bribe not proved by mere general conversation as to Respondent's wealth or liberality.
(1) 149.

Evidence was given by one Ann Mark, the wife of a voter, that an agent of the Respondent had said something to her about getting a piece of land and a cheap house under the Respondent, though it did not appear that any definite promise had been made, or any condition proposed as to her husband's vote.

Mr. Justice WILLES said, in his judgment, as to this:—"One ought to be sure that these general and very often exaggerated commendations of the wealth, and the liberality, and other qualities of the candidate have not been construed or tortured by the particular witness into a promise of some special benefit to himself. The Judge must be satisfied that the conversation out of which a bribe is sought to be extracted really had a special character, and that it was not a mere general commendation of the candidate by his agent as being a good man for the place."

For what purpose canvass books must be produced.
(2) 115.

In the course of the Respondent's case, and after the Respondent had been called as a witness,

Serjeant *O'Brien*, for the Petitioner, asked the Respondent to produce his canvass book.

Mr. *O'Malley*, for the Respondent, objected.

Justice WILLES ruled that counsel were at liberty to ask particular entry in the canvass book.

Book was handed to counsel, and the entry asked for was out.

3 course of the scrutiny,

appeared that a voter, Francis Barker, who had voted for the Respondent, had left the borough before the last day of July, and was now non-resident. No objection had been taken to him by the Revising Barrister, and his name had remained on the list.

Distinction
between non-
residence
before and non-
residence after
July 31,
semble, non-
essential.
(3) 144.

Justice WILLES said that if he had gone away on August 1, he would have clearly been struck off, but the question arose as to the distinction between non-residence before the last day and non-residence after that date was an essential one. His impression was against there being such a distinction, but if it became necessary to decide the case, he would hear the Respondent upon the point.

appeared that two voters, Thompson and Stephenson, had been put down to pair, and not to vote. Just before the poll closed, Thompson, on having been informed that Stephenson had broken his promise, and voted for the Petitioner, went into the polling-booth for the purpose of inquiring whether it was true or not that Stephenson had voted. When he got into the booth he was immediately asked by the returning officer, "Whom do you vote for?" Thompson answered, "For Hutton; but stop," he added, "has Stephenson voted?" On being informed by one of the check-clerks that he had not, he instantly said to the poll-clerk, "Then mine is his."

Vote given by
one who has
promised to
pair with
another voter
good in the
absence of
fraud.
(3) 107.

The poll-clerk, however, had by that time put down Thompson's name as voting for the Respondent, and so it was

Justice WILLES remarked that this case appeared to be the same as the Abingdon case. He then asked Thompson, "You said you did not vote for Hutton, if you did vote at all?"—A. "Yes; but I said to Hutton, 'if I voted at all.' Mr. Hutton said, 'Do you go against me?' I said, 'On no account whatever.'"

Justice WILLES said it was a clear vote for the Respondent,

unless it was defeated by the 5th section of the Corrupt Practices Prevention Act, 1854. He would not give any decision at present.

Subsequently he added that it appeared to him that Thompson, not relying on what he had heard outside, had gone in to make his own inquiries, and had then voted before making inquiries. At the same time, he thought that the notion of voters paining with each other was not recognised by the law, and that it was a mere honourable engagement between the parties. To allow an objection like the present, in the absence of any trick or unfair practice on the voter, would be extremely inconvenient, and would open the door to a large number of disputes. If Thompson had been proved to have deliberately played false, it would have been different; but as he had behaved honestly, he could not interfere.

Upon Serjeant *O'Brien*, for the Petitioner, stating that he proposed to go into the class of cases which raised the question as to opening the register.

Mr. Justice WILLES said that his impression was that the register could not be opened when the Barrister had given no express decision, and that the 98th section of 6 & 7 Vict. c. 18, was conclusive upon that point.

Printer delivering messages incidental to printing not employment in conduct of election.

Serjeant *O'Brien* submitted that the votes of printers who had also acted as messengers should be struck off, as being voters who had been employed in the conduct of the election.

Mr. Justice WILLES said that might be so, if there was a stipulation that a person should be employed as a messenger as well as a printer. But it would not apply to messages incidental to printing, or to any voluntary acting as messenger without a stipulation.

What sufficient residence.
(3) 206.

It appeared that George Johnson, farmer, had about eighty acres of land of his own within the statutory seven miles. On the land was a house for which he paid the rates and taxes, and of which he was the exclusive occupier, but he allowed his sister to live in the house as his guest. He slept there himself only occasionally, and on those occasions his sister attended upon him, as he kept no servants of his own in the house, but his bailiff lived in a part of

house separated from the rest. The furniture was, with very few exceptions, all his own.

Mr. Justice WILLES said he thought this was a slight case of pretence, but a real and sufficient one for the purpose.

It appeared that Thomas Bilton was a plate-layer, and worked on the railway; he had a house in the borough, where his wife and daughter always lived, but he himself only occasionally came and stayed at home.

What sufficient residence.
(3) 106.
(3) 177.

Mr. Justice WILLES said the vote would do at present, because the man's wife resided in the borough.

It appeared that one Marshall had a house within the borough, which he always kept up, although he only stayed occasionally; he kept there two servants to look after the place, and he often invited persons to stay there as guests of his. In the last year he had been there on sixteen different occasions. He had also another establishment beyond the seven-mile limit, where he more generally resided. He had voted for the Respondent. The vote held good.

What sufficient residence.
Establishment always kept up, but only occasionally resided in.
Vote good.
(3) 177.

Upon Serjeant *O'Brien*, for the Petitioners, intimating that he was about to go into the cases of voters disqualified on the ground of their having received parochial relief, some of them between July, 1867, and July, 1868, and others between August 1, and the time of voting,

Parochial relief between July 31 and the election, but not before July 31, invalidates vote.
(3) 226.

Mr. Justice WILLES said that his impression was that nothing could be made of the cases of relief before July 31, but that relief received between July 31 and the election might be relied on as legal incapacity.

Upon evidence being given by the relieving officer that he had given a sum of money to a voter for funeral expenses,

Seemle, funeral expenses relief to master of house.
(3) 237.

Mr. Justice WILLES asked:—"Does relief for burying a person from the person relieved is bound to bury, come within your province?"—A. "Yes."

Q. "And it is relief, as I understand it, to the person who is the master of the house, if there be one?"—A. "Yes."

Q. "Is it considered relief to him because he is bound to bury any one who dies in the house?"—A. "Yes." Vote struck off.

Proof of marriage by reputation, *prima facie* sufficient. Adultery of wife answer to relief given to her, but not to her children.

(4) 11.

It appeared that a woman, who was the reputed wife of a voter who had voted for the Respondent, had received parochial relief for herself and her children.

Serjeant *Sleigh*, for the Respondent, submitted that there was not sufficient proof that the woman was the wife of the voter.

Mr. Justice WILLES said there was sufficient *prima facie* evidence.

Serjeant *Sleigh* then said that the Respondent's answer to the case was that the woman had committed adultery, and that her husband therefore was not liable to support her.

Mr. Justice WILLES said that was no doubt a good answer as to the wife, but not as to the children.

Serjeant *Sleigh* submitted that the custody of children of the tender age would belong to the mother.

Mr. Justice WILLES said that could not be so in the case of an adulteress. It was enacted by 4 & 5 Will. 4, c. 76, s. 56, that relief given to children under sixteen, not being blind, deaf, or dumb, should be considered as relief given to the husband of such wife, or the father of such children, as the case might be.

Serjeant *Sleigh* called attention to the Lancaster case (*Wolferstan and Dew*), in which it was ruled that the relationship of the alleged wife to the voter must be strictly proved.

Mr. Justice WILLES said his attention had been called to the case as a case where laymen were more technical than lawyers. The Committee in that case refused to let a marriage be proved by reputation, but except in bigamy and matrimonial causes, that principle could not stand for a moment in a court of law.

It was then proved that the husband, on discovering that she had committed adultery, turned her out of his house. She took with her two of her children contrary to her husband's wish, and they all three went to the workhouse and received relief. A letter was put in which the husband had written to the Board of Guardians, saying that it was contrary to his wish that his wife

and taken his children with her to the workhouse, and that he was ready to receive his children back, but not his wife, at any moment.

Mr. Justice WILLES said, after hearing the letter, that he believed there had been a *bond fide* endeavour on the part of the husband to get his children out of the workhouse, and that the question was, under the circumstances, whether the relief given to the children was disqualifying relief. At present he would give no liberate judgment upon it.

Mr. Justice WILLES, in his judgment, declared the Respondent to be lawfully elected.

Having stated that it would be needless for him to decide upon the points raised in the scrutiny and postponed, inasmuch as supposing him to decide them all in favour of the Petitioner, there would still remain a majority for the Respondent, he reviewed the case as to the other part of the petition, and said as to corrupt promises :—

Promise of a
corrupt
character.

“When I say a promise is of a corrupt character, I call every-thing of a corrupt character which has a tendency to influence man’s vote with reference to mere lucre instead of honest considerations, including considerations of the legitimate influence which I have already stated it is impossible to exclude, and which would be impossible to remove by law, because it is part of the nature of things which the law has to deal with and to regulate, but which it cannot alter.”

As to intimidation, he said :—

Intimidation.

“A mere attempt on the part of an agent to intimidate a voter, even though it were unsuccessful, would avoid an election.”

As to costs, he said :—

“I see nothing to exempt this case from the general rule that costs should follow the event.”

CASE XXIII.

BOROUGH OF BEWDLEY.

BEFORE MR. JUSTICE BLACKBURN, APRIL 27, 1869.

Petitioner: Major Anson.

Respondent: Mr. Cunliffe.

Counsel for Petitioner: Mr. Powell, Q.C. ; Mr. Machamara.

Agents: Messrs. Tucker and Lake.

Counsel for Respondent: Mr. Serjeant Ballantine ; Mr. Lord.

Agents: Messrs. Lawrence, Plews and Bowyer.

THE petition prayed the seat for the Petitioner upon a scrut

The numbers polled at the election were—

Cunliffe	477
Anson	463

In the course of the case,

It was proved that one Evans who had voted for the Responc
had been sold up, and obliged to leave his house. This l
pened some time between the registration and the polling
Since giving up his house he had lived at an inn in the boro
Having been called as a witness he was asked by Serjeant
lantine:—

“Were you staying at that inn at the time of your voting
the Respondent?”

Mr. Justice BLACKBURN:—“That is not the question; he

Residence of
voter broken
after the regis-
tration.
(1) 30.

oken up his house within twelve months. It does not matter here he was at the time of the election ; the question is, whether e has since the registration broken his residence."

The vote was struck off.

It appeared that one Edmonds lived at Droitwich, but had within the borough a shop where he kept a bedroom and a bed for himself to use whenever he liked. He did, however, in fact, only keep there occasionally, and his wife and family always remained at Droitwich.

Occasional residence of voter within borough not sufficient.
(1) 31.

Serjeant *Ballantine* for the Respondent admitted that he must ve up the question of residence.

It appeared that one Clark had for 45 years been borough constable ; when he first commenced to act as constable he was paid salary by the borough, but was paid by the parties who employed him for serving summonses and other business. Some years go, however, an alteration was made, and he was now paid £15 a year by the borough treasurer ; his duties were to do anything hat came within the scope of a constable's duty, as, for instance, to apprehend people when called upon to do so. He had been on the register ever since the Reform Act of 1832, and had never been struck off. He had voted this time for the Respondent.

Borough constable incapable of voting.
(1) 35.

Mr. Justice BLACKBURN:—"There is great difficulty in getting out of the words of the enactment."*

Mr. Serjeant *Ballantine* submitted that there was not sufficient evidence of appointment.

Mr. Justice BLACKBURN:—"It is difficult in my opinion to make out a stronger case of appointment."

The vote was struck off.

It appeared that two persons, John Hamer and James Hunt, who had voted for the Respondent, had been reported as having been bribed at the previous election.†

Report by a judge that voter was bribed at a previous elec-

* 19 & 20 Vict. c. 69, s. 9, enacts that "no head or other constable already appointed, or hereafter to be appointed for any borough under the said Act of 6 & 6 Will. 4, . . . shall . . . be capable of giving his vote."

† The report was made by Mr. Justice Blackburn, dated January 25, 1869.

tion, does not, under Parliamentary Elections Act, 1868, s. 45, disqualify him from voting.
(1) 44.

Mr. *Macnamara*, for the Petitioner, submitted that their votes should be struck off on the ground that they were disqualified under the Parliamentary Elections Act, 1868, s. 45.*

Mr. Justice BLACKBURN said:—"The enactment provides that upon the case being done the evidence should be laid before the Attorney-General to consider whether he would prosecute or not, and if he does prosecute, and the man is convicted, then he falls under the disqualification. But I do not think the report of the Judge is more than committing a man for trial. I do not think it comes within the case of being found guilty. Besides, the determination of a Judge is not a determination upon the case except incidentally. He has only to make a report, and it can hardly be said that that is the same as finding a man guilty. But I go further. The Act speaks of 'an opportunity of being heard,' and I think that does not merely mean that kind of opportunity which a witness has who is called up upon the spur of the moment, and who is subject to cross-examination; but it means an opportunity of being heard when he has had a fair warning of the charge, and is asked to meet it, and be heard by himself or his counsel. Consequently, I do not think that this case falls within the section; but if the election depends upon a single vote I will reserve the case for the Court of Common Pleas, and the matter will be determined before the next registration revision, as it is more convenient that the Barrister should know what they are going to do."

Medical relief given to voter's child on application by his wife, but without his knowledge or desire, vitiates vote.

(1) 83.

It appeared that the wife of a voter, Danby, had obtained an order for medical advice for their child, who had injured her knee. Danby did not at the time require parochial assistance, and had not authorised his wife to apply for it; he paid himself for the medicine ordered for the child. He voted for the Respondent.

Serjeant *Ballantine* contended that there was no relief given in fact to the husband by an act done not authorised by him, and not necessitated by the circumstances.

* The section is as follows:—"Any person other than a candidate found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall . . . be incapable of being registered as a voter, and voting at any election"

Mr. Justice BLACKBURN, however, ruled that the vote must be ruck off.

Relief given to voter's child over 16 years old does not vitiate vote.

It appeared that the son of a voter had been removed to the lunatic asylum under a parish order. At the time of the removal the son was more than sixteen years old.

(1) 91.

Mr. Justice BLACKBURN :—" I think what is made relief to the voters is that supplied to their children under sixteen. The vote must stand."

It appeared that when the name of one Chillingworth was called before the Revising Barrister a notice of objection had been handed in.

Notice of objection. Objector's place of abode—how stated. 6 Vict. c. 18, s. 17.

The notice of objection, framed under Schedule B (10) of 6 Vict. c. 18, purporting to state the objector's place of abode, had, in fact, stated his actual place of abode at the time of making the objection. But the place of abode thus stated was not the same as that which appeared opposite the objector's name, where he appeared as a voter in the list of voters.

The notice had been objected to before the Revising Barrister on this ground, and had been held bad.

The question was now raised again. It was argued against the notice that it ought to have stated the place of abode of the objector as it had been described in the list which gave him the title to object.

In support of the notice it was contended on the strength of *Howles v. Brooking*, 2 C. B. 226, that the true place of abode of the objector was that which was required to be stated.

Mr. Justice BLACKBURN held that the notice of objection had been in good, and reversed the Revising Barrister's decision.

It appeared that a notice had been given to one Chillingworth that his name would be objected to before the Revising Barrister. When his name was called, it was contended on the part of Chillingworth that the notice of objection was insufficient, and after hearing an argument on the point, the Barrister decided that it was insufficient; so the objection to Chillingworth's name was not put into. Notices of objection with precisely the same faults had been given as to a number of other names; and before the

"Express decision" of Revising Barrister. 6 & 7 Vict. c. 18, s. 98.

Barrister had given his decision as to the sufficiency of the notice of objection in the case of Chillingworth, his attention was called to the fact that, as notices of a precisely similar description had been given in a great many other cases, his decision in Chillingworth's case would in fact govern them all. After he had decided Chillingworth's case, and as his attention had been already drawn to the fact that there were many others like it, it was not attempted to argue the question again upon them.

The result was, that when the Barrister was calling over the names, and when there was no objection made, he did not in fact know at the time whether it was because a notice which he had already decided to be a nullity had been given in that case, or whether it was because there really was no objection at all.

Amongst these names was that of James Baker. He had voted for the Respondents, and it was now sought, on the part of the Petitioner, to go into the merits of his case, and show that his name ought to have been struck off by the Revising Barrister.

On the part of the Respondents, it was contended this was a case where the Barrister had given no "express decision" within the meaning of the 6 & 7 Vict. c. 18, s. 98.

Mr. Justice BLACKBURN, however, ruled that there had in effect been "an express decision" in this case, and that it was, therefore, open to the Petitioner to enter into the merits of it and to show that Baker's name ought to have been struck off by the Barrister.

Referring to 6 & 7 Vict. c. 18, s. 98, as governing this matter, he said :—

"I consider that, since on matters of law there was an appeal to the Court of Common Pleas, but on matters of fact the Barrister's decision was final, the intention of the Legislature was, that where a matter of fact had been fairly raised before the Barrister, and he had heard it and had come to an express decision upon it, then his decision might be reviewed by an Election Committee (or now a Judge), in order to see that injustice had not been done.

"Now, in the present case, it comes with a rather peculiar sort of express decision. The first case coming before the Revising Barrister, the case of Chillingworth, being upon the overseer's list, would have stood upon the overseer's list, without any decision of

the Revising Barrister at all, unless somebody properly objected to it. If anybody properly objected to it, then the Revising Barrister would have to hear the evidence on both sides and to come to an express decision upon the merits. As was right and proper, it was first necessary to see that there was an objection, and that there was a notice of objection which was good, and consequently the Revising Barrister should have inquired into the merits of the case. The Revising Barrister, after hearing and considering it, came to a conclusion which I must treat as an erroneous conclusion, considering myself, as the superior authority, to be right, and the Revising Barrister wrong. He decided that the notice of objection was bad, when in fact it was good.

"Then the first question is, is that retaining his name by 'an express decision?' If the Barrister had been right in saying that the notice of objection was bad, the name could not have been removed from the list at all; but when he, upon this preliminary point, decides that he will not enter into the merits at all, and erroneously decides so when he ought to have entered into them, I think we must consider it as 'an express decision' retaining the name, and consequently enabling me to enter into the merits. It would not follow from that, that Chillingworth's was a bad vote, and should have been struck off, but only that I have the jurisdiction to inquire whether it was a good vote or not. Then, after that had been decided, I have to see whether or not, his not entering into the merits of Baker's case was in consequence of his 'express decision' that the notice of objection in Baker's case was sufficient. Now, upon the facts that have been established before me, I can come to no other conclusion than that it amounts on a point of law to just the same as if his decision had been given over again as to the notice in Baker's case. Therefore I must take the notice in Chillingworth's case to be a decision which applies to govern all the subsequent cases in which the point was the same."

Upon the Petitioner having placed himself in a majority of (2) 152
 agh, —

Mr. Serjeant *Ballantine*, for the Respondent, said that after his Lordship's decision in Baker's case,* he could not advise the

* Vide supra.

Respondent to contest the seat any further, and that having satisfied himself that the counter-charge of bribery against the Petitioner could not be established, he should, with the permission of the Court, withdraw the charge.

Leave was given to withdraw the counter-charge of bribery against the petitioner, and,—.

Mr. Justice BLACKBURN added as follows:—"The counter-charge having been withdrawn, there is nothing further to be said beyond this, that the Petitioner has proved himself in a majority. I therefore find that the Petitioner has a majority of votes, and that he was duly elected for the borough of Bewdley.

Costs.

As to costs, he said :—

"In this, as in other cases, the costs follow the usual course, and will be borne by the Respondent."

CASE XXIV.

BOROUGH OF TAUNTON.

BEFORE MR. JUSTICE BLACKBURN, MARCH 5, 1869.

Petitioners: Messrs. Williams and Mellor.

Respondent; Mr. Serjeant Cox.

Counsel for Petitioners: Mr. Serjeant Ballantine and Mr. J. O. Griffiths.

Agents: Mr. Hoskins and Messrs. Reed and Cook.

Counsel for Respondent: Mr. Rodwell, Q.C. and Mr. Collins.

Agents: Mr. Jacquet and Mr. Trenchard.

THE petition contained the usual allegations of bribery, &c., and prayed the seat, upon a scrutiny, for Mr. James.

The principal charge of the petition related to what was called "barristers' court money," said to have been given by a Conservative Association to voters who attended the registration court, nominally on account of loss of time, but really with the object of influencing their votes at the then approaching election.

In the course of the case,

It was proved that there had been formed in the borough a body called "The Conservative Association," for the purpose of conducting the registration in September and the election which followed in November. That the association had funds deposited in a bank which they drew upon from time to time by means of cheques signed by two of their members. That during the election people met at the room of the association, that papers and circulars were sent out from it, that the association canvassed actively and

Responsibility
of candidate
for political
association.

Colourable
payment to
voters for
registration
expenses.

did all those things which would commonly be done by a committee for promoting an election, and that they did them openly and during a considerable time. That at the time of the registration the agents of the Respondent were aware of the association, and acted in concert with it, sending circulars and causing circulars to be printed which the association paid for. That both the Respondent and his agents knew that the association was active canvassing in the Respondent's behalf. That about the first week in November—long after the registration, and shortly before the election—the association gave 5s. a-piece to a number of voters who had attended the registration in September, as a day's pay for their loss of time in so doing. That this sum was practically paid to everyone who would come forward and ask for it, and without any precaution being taken to ascertain whether those who thus received the money had done anything for it.

Upon this the Petitioners contended,

1. That the association must be taken, in the absence of proof to the contrary, to be the agent of the Respondent.
2. That those who gave the money were guilty of bribery.
3. That those who received the money were guilty of bribery.

Mr. Justice BLACKBURN in his judgment said as to the first point,

"The rule of law has long been established that in parliamentary matters we are not to consider the strict rule of common law agency generally established to this extent, that a person is responsible for his agent in all that he does within the scope of his authority, but is not responsible for anything that he does beyond the scope of his authority (the case of the sheriff being the one exception), so that the common rule of law would be that if you employed a man to do an honest thing, and he chose to commit a crime, you would never be responsible criminally, or even civilly, for the crime committed, when the instructions you gave him were to act as an honest man. But in parliamentary election law it has long been established that where a person employs an agent for the purpose of procuring his election, the candidate, is responsible for the act of that agent in committing corruption, though he himself not only did not intend or authorize it, but even *bond fide* did his best to hinder it."

ing recapitulated the facts as stated above, he continued as follows:—

When things are thus openly done, which would not be done in the ordinary course of things, except with the cognizance of a person who sanctioned them, the natural inference in the absence of proof to the contrary would be that they were done by a person acting as agent for the candidate. It would not be at all surprising. The Respondent and his agents might have shown that they had had no communication with that body, that they repudiated it, and if that repudiation was *bond fide*, they would not have been responsible for its acts. The Respondent might have shown that a body acting in such a way as this body acted, was acting officiously for him, as I may call it, that it was not with his sanction and was against his will: but the presumption does arise, that it was done in his favour, done for him, unless there is something to show the contrary. I think in this case such a presumption of benefit was derived from their assistance, that their assistance was so important to the candidate that it fairly established this, that if he took their assistance and did not hold them to repudiate them, he must abide the consequences and be responsible for their malpractices."

On the second point, he said:—

The matter differs from what it would have been if there had been payment given to persons for their loss of time in attending the election itself, which was the Devonport case.* There is no doubt that such payments when given to a person for his time in coming to deliver his vote are payments for voting, and are distinctly struck at by the words of the section, 2 (2), 18 Vict. c. 102. But when the payment is given for an attendance at the Revising Barrister's court it is not within the terms of the Act. It may well be that there should be payment for an attendance at the Barrister's court which should be *bond fide* for that purpose and no other, and which is not prohibited by the Act of Parliament. I think where it was *bond fide* it would not be a bribe, but if it was intended to induce a vote it would be a matter to be collected from the whole of the evidence that it would be a bribe."

* *Semble*, the Liverpool case, 2 P. R. & D. 248.

After reviewing the evidence, and stating that the question was as to what conclusion must be formed of the motives of the person who advanced the money, he said there could be no doubt that the object was to induce persons to vote at the election.

As to the 3rd point, he said :—

“It may be, as a matter of fact, that a person gives money to voters who would come forward and ask for it, saying, ‘This is paid for your loss of time at the Revising Barrister’s court, and I will pay money for loss of time at the Revising Barrister’s court for every voter who will come forward for it,’ having the full intent thereby to induce the voter to vote on his own side, and yet it may so happen that the voter who comes forward and receives the money comes forward honestly and *bond fide*, because he believes he is entitled to the money for his loss of time. If he honestly and *bond fide* comes forward in that way, I do not, as at present advised, think it would be bribery on his part within the meaning of 17 & 18 Vict. c. 102, s. 3 (1). It is a question of fact, and whether a person comes forward to receive money which is given as a bribe. The general rule of evidence which applies to all such cases would lead one strongly to conclude that the person took it as a bribe, though it by no means follows as a matter of law that it would be so.” He concluded by saying that if these were gone into it would be necessary in the interests of the constituency to take each individual case by itself.

Mr. Justice BLACKBURN in his judgment declared the Respondent unseated on the ground of bribery.

Liability of
candidate for
acts done by
agents.

As to the liability of candidates for acts done by their agents, he said :—

“The rule of parliamentary election law, that a candidate is responsible for the corrupt act of his agent, though he himself only did not intend it or authorise it but *bond fide* did his best to hinder it, is a rule that must at times fall with great hardship upon particular persons. But I may just mention the considerations which no doubt led the common law, as I may call it, to Parliament to establish it. Corruption, as we all know in practice and in fact, is seldom or never done by the hand of the candidate. The two modes in which it was found in practice that corrup-

was carried on were these : persons were put forward to do all the work of canvassing and conducting an election, and these persons acted corruptly, but the candidate purposely kept himself out of the knowledge of anything about the matter so that he might have the full benefit of their services, and were it not for this rule which has been established he would not suffer for their misdeeds. That is one of the great reasons. Another great reason would be that no doubt people were put forward as to whom the candidate was carefully kept from knowing they were spending any money or doing any thing, with the notion, according to the loose morality that prevailed in election matters, that when the time for petitioning was past those persons might come to him and say, 'I did spend that 1000*l.* for you upon the election ; of course I did not tell you about it, or say a word about it at the time, but now you are bound in honour to repay me that 1000*l.* of which you had the benefit,' and which in point of fact the candidates did feel themselves bound in honour to pay. This, therefore, was another reason for the parliamentary law declaring that the candidate should be responsible for the act of his agent."

As to the definition of agency, he said :—

"What is the definition of agency for which the candidate would be responsible ? what relation between the candidate and the person who is shown to be guilty of a corrupt practice would be sufficient to make the candidate responsible for that person's corrupt practice ? I am not able at present (and I rather doubt if in the nature of things it is possible) to say. I think all one can do is this, to say that wherever a person is in any way allowed by a candidate or has the candidate's sanction to try to carry on his election and to act for him, that is some evidence to show that he is his agent. I think that we cannot come further (at least I have not been able to come further) than to say this. If in the ordinary course of things I had a jury to find the facts, I being a judge of the law, the direction I should give the jury would be to say, 'All this is some evidence of agency ; what I must say to you is to point what I consider the reasons that have led to the law being established in this way. In the present case the particular consideration would be whether or no the agent has been doing so much for the candidate, whether there was so much *commodum* done that it

Definition of
agency.

would be just (using the Latin phrase quoted by Mr. Rodwell) to impose the *onus* upon him. I think I could not define it better than that I should say to a jury, 'It is a question of more or less, it is the extent to which it goes. If there is evidence to show that the party is acting for the member who is returned, then I think one should consider him to be an agent, if, taking the spirit and object of the rule, you think bringing your common sense to bear upon it that he was substantially an agent.' I think that is all I should say to a jury; and then as the Legislature have thought fit to make me both Judge and jury, I must apply that guide as best I can myself. I at once see the great inconvenience of such a rule as this being laid down. If that be the proper guide to be taken the law must be very uncertain. It is an old observation of Selden in his 'Table Talk' upon Equity as then administered, when there were no fixed rules but according to the conscience of the Chancellor, that equity necessarily is as uncertain as a measure of length in which the standard for the measure was made the Chancellor's foot;* a remark with strong sense in it, and no doubt as applicable to the substantial common sense of an Election Judge as it was to the conscience of the Chancellor in those days. But I have been unable, after the best consideration I have been able to give to it, to devise any better rule."

As to the scrutiny, he said:—

Question to
be decided
upon the
scrutiny.

"The further question as to whether or not Mr. James should have the seat would depend upon the result arrived at after going through the individual votes, and seeing, without regard to who it was that corrupted this man or that, what was the majority of uncorrupted voters, and whether there was a majority for anyone who had not rendered himself by personal misconduct incapable of standing."

At the conclusion of the judgment,

Mr. Rodwell stated that after his Lordship's plain language with reference to those persons who were said to have received the money in respect of services not done, it would be waste of time to oppose Mr. James putting in at once a number of voters to give

* Selden's "Table Talk," ed. 1856, by Singer, p. 49.

him a lawful majority. He proposed at once to strike out those votes which came within the terms of the judgment.

Mr. Justice BLACKBURN assenting,

Mr. *Rodwell* admitted 16 votes bad on the ground of parochial relief and non-residence. Mr. James was thus placed in a majority.

Mr. Justice BLACKBURN then stated that his certificate would be that the Respondent was unseated, and that Mr. James ought to have been and should now be returned.

Mr. Justice BLACKBURN said, as to costs,—

“As the petition has succeeded, costs must be paid by the Costa Respondent.”

CASE XXV.
BOROUGH OF WIGAN.

BEFORE MR. BARON MARTIN, MARCH 6, 1869.

Petitioners : Messrs. Brayshay and Atkinson.

Respondents : Mr. Henry Woods and Mr. John Lancaster.

Counsel for Petitioners : Mr. Hardinge Giffard, Q.C. ; Mr. Leresche ;
Mr. Poland.

Agents : Mr. Mayhew and Mr. Ackerley.

Counsel for Respondents : Mr. Serjeant Parry ; Mr. Murphy.

Agents : Messrs. Leigh and Ellis.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that one Wilcock, who had been employed by a society in the town called "The Liberal Association," to which the Respondents among other people, had contributed, had corruptly paid the rates of a voter. The evidence, however, failed to establish that Wilcock was acting as an agent of the Respondents, or that they were liable for his wrongful act.

Evidence was given to prove intimidation on the part of the manager of the Wigan Coal and Iron Company, but it failed to establish any case.

The evidence also as to sundry acts of bribery proved to be wholly insufficient.

In the course of the case:—

Upon one Gallagher being called as a witness to prove that he had been bribed,

Serjeant *Parry*, for the Respondents, objected that his name was not in the particulars delivered pursuant to an order made by Mr. Justice Willes.

Mr. *Giffard*, for the Petitioners, submitted that in the *Bewdley* case,* Mr. Justice Blackburn had allowed the particulars to be amended without a summons being taken out, and that Mr. Justice Willes had done the same thing in the *Penryn* case.†

Mr. Baron MARTIN said that if it was not in the particulars he would not help them; he could not allow the particulars to be amended except on a summons supported by an affidavit stating that the name of this witness had come to be omitted.

The witness then withdrew.

It was proved that a society, called “The Liberal Association,” had been formed in the borough, with a view of promoting the interests of the party. The Respondents, as well as a number of other gentlemen of similar political opinions, contributed to it. The manager of the association was one Stewart. Stewart, as such manager, had employed one Wilcock to attend to the registration, to be, as he was called, Objector-general for the Liberal party before the Revising Barrister. Wilcock corruptly paid the rates of a voter. He did this quite on his own responsibility; Stewart had not in any way, directly or indirectly, authorised him to do so, and he did not in fact know, till he was called upon by one of the agents of the Petitioners, that it had been done.

Upon these facts, Mr. *Giffard*, for the Petitioners, contended that this association was in the nature of a partnership, and that any act done by Stewart would bind all the subscribers to the association, and among them the Respondents, who would thus be directly responsible for Stewart’s appointment of Wilcock, and so liable for Wilcock’s corrupt act.

Mr. Serjeant *Parry*, on behalf of the Respondents, contended that no agency had been proved; and further, that upon the true

Name of persons bribed not in particulars, amendment.

(2) 1.

Members of a political society not responsible for each other’s acts in the same way as partners are.

Corrupt payment of rates by an employé of respondent.

Effect upon respondent unless express authority from respondent to do so is proved.

* Vide ante, page 16.

† Vide ante, page 127.

construction of 30 & 31 Vict. c. 102, s. 49,* the doctrine laid down with reference to 17 & 18 Vict. c. 102, viz., that a candidate is responsible for the improper act of his agent, although he may have not only not authorized him to do that act, but may have expressly forbidden him to do it, did not apply to the case of corrupt payment of rates, and that in order to make a candidate responsible for the corrupt payment of the rates of a voter, it must be proved that the candidate expressly authorized that corrupt payment.

Mr. Baron MARTIN in his judgment said as to this :—

“ It has been argued by counsel for the Respondents that upon the true construction of 30 & 31 Vict. c. 102, s. 49, the doctrine laid down with regard to 17 & 18 Vict. c. 102, s. 2, does not apply; and that is rather my own impression. I do not mean to give an opinion upon it, because it is unnecessary in this case. The circumstances of the case are these : There is a body in the town called the Liberal Association, and for the Petitioners it is contended that the persons who subscribed to that association are in the nature of a partnership, and that the giving funds to Stewart for the purpose of enabling him to carry on that association made him their agent, so that acts done by him would be obligatory upon them, and that they would be bound by them. From that view I dissent. There is no similarity to a partnership. There was given to the body the collective name of the Liberal Association, but the only person acting is Mr. Stewart. The Respondents and other gentlemen agreeing with them in politics contributed to it; but this does not make Mr. Stewart their agent so as to bind them by his acts either criminally or civilly, any more than the manager of a club to which a gentleman may belong could make him responsible for the acts of that manager. The case of *Limpus v. The*

* Any person, either directly or indirectly, corruptly paying any rate on behalf of any rate-payer for the purpose of enabling him to be registered as a voter thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf, and with whose privity such payment as in this section mentioned, is made, shall also be guilty of bribery and be punishable accordingly.

*General Omnibus Company** has been referred to. That case was governed by the law applicable to the relation of master and servant, which is different from that of principal and agent. The relation of master and servant imposes upon the master a liability for an unlawful act done by the servant in the course of his employment, and notwithstanding a prohibition which may have been given to him by the master. But the ordinary rule with regard to principal and agent is that the principal is only responsible for that which he authorises the agent to do, and in all other cases of which I am aware, except these parliamentary cases, where you have a man who is sought to be made liable upon the acts of his agent, the question is, did the principal give the agent authority to do the act? If that be negatived the principal is not responsible, the rule of law being that if a man acts through an agent, he can only be held responsible to the extent of the authority he gives the agent. In my opinion, as at present advised, it would be necessary, in order to establish that a person had corruptly paid a rate for another, when the rate was in fact paid by a third person, to show that that third person was authorised by the person sought to be charged to pay the rate. The enactment is that any person corruptly paying a rate on behalf of a ratepayer for the purpose of enabling him to be registered is guilty of bribery; and my present opinion is, that in order to make a third person responsible for that act, you must prove that he gave authority to the person to do that act. However, it is not necessary for me to express an opinion upon that. I have pointed out what, in my judgment, is the difference between a partnership and the Liberal Association, and that there is no partnership privity between the parties subscribing, and no relation of principal and agent. In fact, Mr. Stewart is the Liberal Association, unless so far as the subscribers personally interfere, when of course they would be responsible for their own acts. Wilcock was the person employed by Stewart to attend to the register, or to be the Objector-general, as he was called; that gave him no authority to bind Stewart by an act of bribery, and if Stewart had been indicted for the misdemeanor upon the assumption that what

* 1 H. & C. 526.

Wilcock did was bribery, I do not believe that any Judge would upon the evidence before me, allow the case to go to the jury. There is no evidence against Stewart, and much less is there any evidence against the Respondents. In my judgment, subscribing to the fund for the purpose of having the registration attended to in the borough, whether it be a Conservative or Liberal Association, does not make the subscribers to that fund partners, and does not confer any authority upon the person who manages it to make them responsible for an illegal act that may be done by the manager. I think, therefore, that the case against the Respondents fails so far as regards the payment of rates."

Mr. Baron MARTIN, in his judgment, declared the Respondents duly elected.

How far
honesty of
candidate
affects evi-
dence of acts
of agents.

As to the principle on which a Judge should act in trying a petition alleging corrupt practices, he said:—

"If I am satisfied that the candidates honestly intended to comply with the law and meant to obey it, and that they themselves did no act contrary to the law, and *bonâ fide* intended that no person employed in the election should do any act contrary to the law, I will not unseat such persons upon the supposed act of an agent, unless the act is established to my entire satisfaction. Things may have been done at an election of which I do not approve—for instance, having committees at public-houses, hiring a number of carriages (which now in borough elections is prohibited), or hiring roughs,—but which do not of themselves avoid an election. They are ingredients which may be taken into consideration, and they may tend to show what was the real quality and meaning of an ambiguous act, which may have one effect or another according as the Judge's mind is satisfied that it was honestly or dishonestly done. It may be that at an election certain acts have taken place which the Judge disapproves of, but which do not satisfy him that another act upon which the validity of the election depends was corruptly done. But if, upon a future petition arising upon another election in the same place, acts similar to those of which the Judge had expressed his disapproval were proved to have been repeated, the Judge who tried the second petition might well take them into consideration to aid his conclusion that the act upon

which the validity of the election depended was a corrupt and dishonest act."

As to costs, he said :—

"The costs will follow the event. So far as the corrupt payment Costs. of rates is concerned it was an experiment, and that is a case in which the Courts uniformly give costs. Upon the other grounds the petition has signally failed, and therefore the costs ought to follow the event."

CASE XXVI.
BOROUGH OF HEREFORD.

BEFORE MR. JUSTICE BLACKBURN, MARCH 9, 1869.

Petitioners: Thomas and others.

Respondents: Messrs. Clive and Wyllie.

Counsel for the Petitioners: Mr. Price, Q.C., Mr. Dowdeswell, Q.C.,
Mr. G. Brown, Mr. Cleave.

Agents: Messrs. Jones and Starling.

Counsel for the Respondent Clive: Mr. Powell, Q.C., Hon. E. Chandos Leigh.

Agent: Mr. G. J. Durant.

Counsel for Respondent Wyllie: Mr. Serjeant Parry, Mr. Rathbone.

Agent: Mr. B. H. Wyatt.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It appeared that a breakfast was given by one Harrison on the morning of the polling day, to which any one who liked was invited to come and have drink; breaks and vehicles were also provided at Harrison's house, in which the people who came there were carried to the poll. It was proved that all this was done for the purpose of influencing the election. Harrison's agency was not established by any one specific fact, but it appeared that voters were invited and brought to this breakfast by several of the Respondents' committee men; that Harrison himself went canvassing on one occasion in company with one of the principal agents of the Respondents, and that on another occasion he himself, at the request of another of the Respondents' agents, can-

vassed two voters; that after the election was over he was thanked for his services in letters from the Respondents themselves. This was held sufficient to constitute agency.

In the course of the case,

Upon Mr. *Price*, for the Petitioners, stating that he was about to go into the case of one Hughes, whose name was not in the particulars, and upon objection being made on the part of the Respondents,

Where name not in the particulars, case postponed.
(1) 186.

Mr. Justice BLACKBURN said he would not allow the case to be gone into that day, but that it might be taken on the next day.

Mr. Justice BLACKBURN, in his judgment, declared the Respondents unseated on the ground of corrupt treating by their agents.

On the question as to agency, he said:—

“There is always a great difference in my view in the degrees of agency. As you go lower down you require more distinctly to show that the act was done by a person whom the candidate would be responsible for. As you come higher up it is more as if the candidate had done it himself. Also, for such a purpose as fixing a candidate for the chaffering for a vote not actually carried out, you require more complete evidence of agency than you would require for an offer actually executed.”

Mr. Justice BLACKBURN commented upon the reasons why the parliamentary law of agency differed from the common law of agency. His remarks were substantially the same as those made by him a few days before in the Taunton case.*

On the question of treating, he said:—

“The terms of the Act of Parliament regulating treating are clear and distinct. ‘Every candidate at an election who shall corruptly (the word “corruptly” means contrary to the intention of this Act, with a motive or intention by means of it to produce an effect upon the election), by himself, or by or with any other person . . . directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay wholly or in part any expenses incurred for

Meaning of the word “corruptly.”

* Vide ante, page 184.

any meat, drink, entertainment, or provision to or for any person in order to be elected, or for being elected, or for the purpose corruptly influencing such person, or any person, to give or refrain from giving, his vote,' shall be deemed guilty of treating. Now that case, as well as in others, a candidate is responsible for the acts of his agents when they are so far agents that what they were doing they have been employed or authorised by him as agents to do : he is answerable for their corrupt acts, although he may be no party to them."

As to costs, he said :—

Costs.

"As a general rule I have in every case considered that the costs of the election ought to abide the result. As a general rule that is right, and that is particularly right where the Petitioners have been successful in avoiding an election, and have therefore done a public service. But in this particular case there is a reason why I think I cannot do it. In making the rules we had then before us, that it was the very essence of justice and fair play that every man, who was accused of anything, should have due and sufficient notice of what it was that he was accused of, and of the only, so that his attention should not be distracted to immaterial matters. For that purpose we have established the practice that particulars should be given, stating what it is the Respondents were required to meet. Those particulars were not required to be given long before. Three days before the time came, the other side might know what they were to meet, so that they might then be prepared to meet the case, and might not waste time and trouble in hunting up different matters, on which the Petitioners did not rely, the object being, as I have already pointed out partly to secure fair play, and partly the saving of the waste costs. And a very important further matter is that, fifteen working days' notice of trial having been given, and it not being required till the twelfth of those had gone by that the Petitioners should give those particulars, they should make use of the twelve days in ascertaining and sifting their evidence, that they should really conduct the case as we do in an ordinary trial as much as can be done towards fair play and precision.

"These being the objects, and the particulars being required to those objects, how have they been complied with here? (

hundred and eighty-four cases of bribery have been put down, which the Respondents must have had to look into. Of those there are five on which evidence has been given, and of those five the Petitioners have not succeeded in establishing one to my satisfaction. There are five cases that have come to nothing, with one hundred and eighty-four charges in the particulars. It is obvious that that could not have been done except for the purposes of baffling the objects of giving the particulars, and it is obvious that it must have given the Respondents a great deal of unnecessary trouble. It is justice to the Petitioners to say that, although I have not known quite so gross a case as this before, yet generally the particulars have been used very much as if they were intended to give no information at all; and the only way to check that is to say, that where that is done we shall follow the spirit of the Act of Parliament, which says* that the costs shall be in the discretion of the Judge, who shall direct how they shall be allotted, bearing in view whether or no there has been useless expense and vexation caused. That is the meaning of the Act. That being so, I can only say that though here the Petitioners have succeeded, I do not think it would be right to make the Respondents bear their costs. The Respondents having failed will not get their costs. In this particular case, and under the particular circumstances, I direct that each side bear their own costs."

* Parliamentary Elections Act, 1868, s. 41.

CASE XXVII.
BOROUGH OF BLACKBURN.

BEFORE MR. JUSTICE WILLES, MARCH 12, 1869.

Petitioners: Messrs. Potter and Feilden.

Respondents: Mr. Hornby ; Mr. Feilden.

Counsel for the Petitioners: Mr. Digby Seymour, Q.C. ; Mr. R. J. Biron ;
Mr. Marriott.

Agents: Messrs. Merriman and Pike.

Counsel for the Respondents: Mr. Serjeant Ballantine ; Mr. Leresche ;
Mr. Gorst.

Agents: Messrs. Ridsdale and Cradock.

THE petition contained allegations of bribery, treating, and undue influence.

The 5th clause alleged that the Respondents “were by themselves, their agents, friends, and managers guilty of undue influencing voters to vote at the election, and have committed the offence of undue influence within the meaning of the Corrupt Practices Prevention Act, 1854 ;” and the 6th clause, “that notorious and systematic corrupt and unlawful practices were carried on at the election by the agents, friends, and managers of the Respondents.”

The petition did not pray the seat.

The charges of bribery and treating were abandoned.

In support of the charges alleging undue influence, it was proved that in several Tory mills in the borough all the workmen w

ventured to express liberal opinions, or who declined to vote at municipal elections for the Tory candidates, were just before the parliamentary election in some instances driven out from the mills, and prevented from continuing their work by their fellow-workmen, the masters looking on and not attempting to interfere in their behalf, and in other instances discharged by their masters. A little while previous to these acts of oppression, a circular had been sent round by an association (which the candidates afterwards adopted in place of a committee) to every "manager, overlooker, and tradesman and any other person having influence" in the town, requesting them to "secure in the municipal elections as well as in the parliamentary, the success of the candidates who adhere to the constitution in church and state."

In the course of the case,

It having been proved on the part of the Petitioners (who were Whigs) that workmen had been dismissed from certain Tory mills because of their political opinions, a witness was asked in re-examination :—

Q. "Do you know of your own knowledge of any man being turned out of Spencer's mill (which was a Whig mill)?"

A. "No men were turned out."

Q. "Did Spencer take any public step to prevent anything of that kind happening?"

A. "Yes."

Q. "Did he put up a notice in his mill on the subject?"

A. "Yes."

Mr. Serjeant *Ballantine*, for the Respondents, objected to the Petitioners putting in evidence of this kind, and submitted that if it was admitted he was entitled to go into a recriminatory case.

Mr. Justice WILLES said that inasmuch as the seat was not claimed, the Respondents had it not in their power to set up a recriminatory case. He was, therefore, of opinion that the Petitioners had no right to commence by proving that their party was innocent of something of which they were not accused. If, however, in the course of the Respondents' case anything should be thrown out against the character of any particular mill-owner upon the Whig side, he would permit that mill-owner to come forward

When seat not claimed, evidence exculpatory of petitioner's party not admissible.
(2) 230.

and give any explanation he liked, not as a witness, but merely with a view to fair play.

But, if the evidence was offered for the purpose of proving that certain means had been taken by certain Whig mill-owners which had had the effect of pacifying their hands, and that, therefore, one ought to conclude that the same means if taken by the Tory mill-owners would have had a similar effect upon their hands, that was, in his opinion, too vague an inquiry to go into.

Liability of respondents for acts of a political society adopted by them in place of a committee.

It was proved that on the 12th of October, that is about a month before the election, a circular was issued by an association in the town called the Conservative Association, addressed to "every manager, overlooker, and tradesman, and any other person having influence" in the town of Blackburn, requesting them to "secure in the municipal elections as well as the parliamentary the success" of the Respondents; and it went on to say, "we venture to urge upon you most strongly the necessity of vigorous personal effort to secure the return" . . . of the Respondents. This circular was afterwards adopted by the Respondents, and the association which had issued it was adopted by them in place of a committee for the management of the election.

Mr. Justice WILLES, in his judgment, said as to this :—

"This circular must be taken as being the act of the Respondents just as much as if each of them had written a letter to this effect to every "manager, overlooker, and tradesman, and any other person having influence" in the town. It is a power of attorney to the extent to which it goes to every individual in any of those classes to do that which the circular requests him to do. It must be looked to, I think, as the foundation of authority and agency, such as existed in the election. Of course it would be prodigious to say that it at once made every overlooker in the place an agent of the Tory candidates. That would be quite out of the question, because if it were so it would follow in strictness of law that they would be equally answerable for the acts of the overlookers of the opposite way of thinking, or that they would be liable to be unseated for acts done in bad faith by some person who pretended to be an agent of theirs for the purpose of betraying them by doing acts which might eventually invalidate the

election. But it appears to me that its effect was to make an agent of every person having authority down to the last grade, that of overlookers over the hands, and to request, and therefore authorise, each such to influence the hands who were under him for the purpose of inducing them to vote for the candidates upon whose behalf this document was issued, and any overlooker, and consequently anybody in that or any higher grade, who *bond fide* took up the Tory side, and who acted upon the circular and did canvass for the Respondents, became their agent, and his acts did bind them."

Mr. Justice WILLES, in his judgment, declared the Respondent unseated on the ground of intimidation by agents, as charged in the 5th clause of the petition.

As to the 6th clause, he said :—

"It was suggested by the petition that undue influence and intimidation of the description charged had extended (because so I must read the general clause with which the petition concludes, the 6th clause) to such a length as to be general, and that the election ought to be declared void upon the ground of general corruption—whether in the shape of the abandoned charges (those of bribery and treating) or of the charge adhered to (that of undue influence)—extending to such a body of persons in the borough that, quite apart from any influence of members or their agents, there was no freedom of election here."

Meaning of the charge of "notorious and systematic corruption."

He then went on to state that this charge of general corruption had not been substantiated.

As to the law relating to agency, he said :—

"Nothing can be clearer than this law; it has existed for a very considerable period, I believe certainly from as early as the time of James I. Some 265 years ago the general principle was laid down upon the first and only occasion upon which the jurisdiction of the House of Commons over parliamentary elections was seriously questioned,* and upon which occasion it was confirmed. And it is enacted and settled as the law by the Corrupt Practices Prevention Act of 1854, s. 36, which, to my mind, does no more than lay down in very distinct terms that which has been always

Law as to bribery by agents explained.

* Goodwin's case, 2 State Trials, 91.

the understood law of Parliament, or rather the common law of the land, with respect to the election of Members of Parliament that is to say, that no matter how well the Member may have conducted himself in the election, no matter how clear his character may be from any imputation of corrupt practice in the matter, yet if an authorised agent of his, a person who has been set in motion by him to conduct the election, or canvass voters on his behalf, is in the course of his agency guilty of corrupt practices, an election obtained under such circumstances cannot be maintained. As it has been expressed from early time, no person can win and wear a prize upon whose behalf the contest has not been legitimately and fairly carried on, or, as it was expressed upon the occasion to which I refer, *non coronabitur qui non legitime certaverit*, which is only so much in Latin showing the antiquity of the principle which I have already expressed in English ; and whether it be that the person who contends in respect of any unfair play of his own, whether it be the owner of a horse in respect of the unfair play of his jockey, whether it be the owner of a ship in respect of the fault of his steersman, or the hoisting of an additional sail against the rules of the race by one of the seamen ; or whether it be a candidate in a parliamentary contest in respect of his agent in every one of those cases, whether it has been the principal who has been guilty of illegality, or whether the illegality has been committed by his agent only, even without his authority or against his will, provided it be done in his agency and for the supposed benefit of his principal, such principal must bear the brunt, and cannot hold the benefit in respect of that in which the agent has compromised him, and would in a matter of this description have also betrayed the public, who have a right that a just election shall be had. The amount of the injury done by the agent, if the injury has been done of the character which I have described, is immaterial. If an agent bribe one voter with 2s. 6d., and the voter votes for the candidate, election void. If an agent bribe one voter with 2s. 6d., and the voter taking the 2s. 6d. with purpose, express or implied, of voting accordingly, should break his promise, and vote for the other side, election still void. Although the result of the bribe was nothing as to the poll, the result was in point of law that an illegality of so gross a character and so difficult to trace would have

been committed, that no election would be safe, no community would be sure but that elections were gained by the exercise of corrupt practices, unless, for the sake of all, the election in which an agent has been guilty of such a malpractice were held void as against the principal of that agent. It is not by way of punishment to the principal that the election is held void, it is not because the majority has been swayed or even affected by the malpractice that the election is held void, but it is because malpractices designated as corrupt by the common law and by the Legislature in the Corrupt Practices Act, are so odious and are so dangerous, that it is thought better to hold void an election where either such practices have generally prevailed, whether traceable to a Member or his agents or not, or where a single instance of such corrupt practice has been distinctly traced to the Member or to an agent of the Member."

On the subject of intimidation by dismissal from employment, he said :—

"Is it undue influence within the meaning of this fifth section to discharge servants who have votes on the eve of a parliamentary election upon the ground of their politics differing from their masters? It has been argued by my brother Ballantine that with respect to a person so sent away, he is sent, so to speak, into the enemy's camp; he is not influenced directly, he is sent from influence; it is only made worse for him that he has been of a certain political sect. He is sent away; and it might be said that all idea of influence is removed, because he is not only sent away into the enemy's camp, but he is sent away angered by the ill-treatment he has received; he has been persecuted, and therefore he is more likely to crown his martyrdom by voting for the other side. Therefore it is said no harm is done, and there has been no violation of section 5 of the Corrupt Practices Prevention Act. Well, that may be so in an individual case. A good deal would depend upon the circumstances, for instance, as to whether the injury inflicted upon him was an injury which would make him likely to change his mind in order that he might be taken back into the service of the person who discharged him; or that he might be taken, notwithstanding that discharge, into the service of some other person of the same political opinions as the master who

Dismissal on ground of political opinions, indirect influence, evidence.

had dismissed him. But the matter is not at all concluded here because the section says that the undue influence which is reprehended by it shall not be practised, whether directly or indirectly and it is not because the one man who may be shoved or hooted or pelted with mud, or dismissed from his employment on account of his political opinions, may, if he is a man of independence, be only the more fortified in them, and only be influenced against the persons who ill-treated him, that therefore no influence is exercised upon other persons of the same class. On the contrary, whilst the strong-minded would be influenced against the intimidation, the weak-minded and the waverers, whether in the same employment or in others under like circumstances, would, or might be deterred. That they might be deterred is sufficient. I conceive it to be clear that the 'practice of intimidation' mentioned in the fifth section is a phrase carefully used to avoid the sort of quibble which persons who are not lawyers suppose has arisen in cases of highway robbery, where the indictment used to contain the words 'putting him in fear of his life,' and the prosecutor a brave man, being asked, 'On your oath, were you in fear of your life?' replied, 'On my oath, I was not.' In order to prevent the possibility of any quibbles of that kind the Legislature in the fifth section uses language which makes it undue influence to practise intimidation directly or indirectly with intent to influence the vote of a single voter. Whether the voter be the person ill-treated, or whether the ill-treatment be violence or damage done by the removal of custom or business, or employment, is immaterial. If it is done with a view to affect votes, or interfere with the free exercise of the franchise, it is within the prohibition of the fifth section. I think, therefore, that the proper answer to the question which I have put is that the wrongful dismissal by an employer of a voter or voters from his employment shortly before the general election, upon the ground of his political opinion, is evidence of intimidation within the fifth section."

As to dismissal, partly on political and partly on other ground he said :—

Motive for
dismissal.
Intimidation.

"Another question arises as to the dismissal of workmen by the masters immediately before a parliamentary election, and that is this : where an employer has a mixed motive for dismissing a

man, where he has a reason for getting rid of him apart from his politics, is the employer bound, in point of law, to abstain from getting rid of him merely because of the general election coming on? Well, I think that in point of law as an abstract question, he is not bound to abstain. But I think any sensible man or sound lawyer advising him would say, 'You may do so, but take care how you do so, because unless you prove clearly that you have a good ground for discharging your servant apart from the political one, it is inevitable that your discharge of him will be imputed to your dislike not of the man himself, but of his politics.' "

As to costs, he said :—

"One matter to decide is whether I ought to condemn the Respondents in the costs of these proceedings. In determining that, it was my duty to examine the course which the proceedings have taken, and I found that in these proceedings charges have been made of a very extensive character, both against the borough of Blackburn and against the sitting Members, especially as to the Respondent Hornby personally, which have wholly failed. These charges constituted a great portion of the staple of the petition; they were alleged, and persisted in up to a late moment, and they were in part only withdrawn, and certainly not withdrawn in a manner that I could have desired when the petition came on. There was no ground whatever for having made them; and taking into consideration all the circumstances under which the unfortunate transactions occurred, I have come most clearly to the conclusion that the case is an exceptional one with respect to costs, and that I ought not to make an order with respect to costs on either side."

CASE XXVIII.
BOROUGH OF KING'S LYNN.
BEFORE MR. BARON MARTIN, MARCH 16, 1869.

Petitioners: Messrs. Armes and Holditch.

Respondent: Hon. R. Bourke.

Counsel for the Petitioners: Mr. Serjeant Parry ; Mr. Kenelm E. Digby

Agent: Mr. Beard.

Counsel for the Respondent: Mr. H. Giffard, Q.C. ; Mr. McIntyre.

Agent: Mr. Henry Smith.

THE petition contained the usual allegations of bribery, & did not pray the seat.

The evidence in support of the petition failed altogether to establish a case.

In the course of the case :—

Mr. John Goddard Wigg was asked by Mr. *Digby* for the petitioners,

Q. "Did you conduct the canvass on behalf of Sir Fowell B. Coleridge, the unsuccessful candidate?"

A. "I kept the canvass as reported to me by the reporters and canvassers."

Q. "Did you keep a book embodying the result of the reports?"

A. "Yes."

Evidence of what district canvassers have reported as the result of their canvass, not strictly admissible. Canvassers themselves should be called.
(1) 3.

Q. "Will you say generally what result your books showed the night before the election?"

Mr. *Giffard*, for the Respondent, objected to the question. He requested that this should be proved by calling the canvassers themselves.

Mr. Baron MARTIN :—"What persons reported to the witness is not admissible as evidence, but in every case yet that I have tried it has been given without objection; but as it is now objected to, let the canvassers first show their returns, then it will be competent for this witness to state the result in the same way as an accountant."

Upon a witness, John Hall, whose name was not in the particulars, being called to prove general treating at a certain public-house,

Mr. *Giffard*, for the Respondent, objected.

Mr. Serjeant *Parry* submitted that he might give evidence of general treating without the name either of the person who had been treated, or of the public-house where the treating took place being in the particulars.

Mr. Baron MARTIN, although he did not think it was necessary to give the name of the public-house, objected to receive any evidence whatever as to treating from a person who had been treated, if his name was not down in the particulars furnished.

A witness, Page, called for the Petitioners, stated that he was a supporter of the unsuccessful candidate; that on one occasion previous to the election he went into a public-house and found there a number of men being served with drink gratis. Seeing there one Medlock, an active supporter of the Respondent's party, he asked him whether the persons who were drinking there gratis were voters or not, and he answered that they all were.

Mr. *Giffard*, for the Respondent, objected that this was not evidence against the Respondent. Assuming that Medlock was subsequently proved to be an agent, it did not necessarily follow that everything he said would bind the Respondent, though what he did might affect the Respondent.

Mr. Baron MARTIN :—"The act of an agent is evidence against

No evidence whatever of treating admissible, unless name of person treated down in particulars.

(1) 177.

Statement by agent, when evidence.

(1) 82.

a Respondent, but, speaking generally, it is confined to ~~that~~ though it is possible that he may be such an agent as to make ~~his~~ statements evidence also. But clearly you cannot make use of statement made by an agent upon a matter with which the agent is not connected, which is really nothing more than hearsay."

Statements by a voter evidence to invalidate his vote upon a scrutiny, but not to affect Respondent's seat.

(1) 39.

A witness, Charles Smith, was called for the Petitioners, for the purpose of proving that he had been bribed to vote for the Respondent, and was asked,—

Q. "Did you receive anything for voting for the Respondent?"

A. "No."

Q. "Did you ever say to Mr. Battenham that you had been well paid for your day's work?"

A. "No."

Mr. *Digby*, for the Petitioners, then asked leave to call Mr. Battenham to contradict the witness Smith, and to prove that at the time he gave his vote he admitted he had been bribed, and that an objection was then taken.

Mr. Baron MARTIN:—"If you do, that will not be evidence against the Respondent. It would affect this man's vote upon a scrutiny, but to affect the Respondent's seat, you must prove by evidence that this man was actually bribed, not merely that the man said he was bribed."

Agency ceases with the election.

It having been proved that one Bagge, after the election was over, sent presents of hares to a number of the persons who voted for the Respondent,

Mr. Baron MARTIN, in his judgment, said as to this:—

"Where was the agency of Mr. Bagge with respect to this? What is there to show that there was an agency in him after the election? Assuming him to have been a canvasser for the Respondent, and to have been his agent during the election, his agency ceased when the election was over. I have stated that as my opinion before,* and if it were necessary in this case I would reserve it for the Court of Common Pleas."

Mr. Baron MARTIN, in his judgment, declared the Respondent duly elected.

* Vide ante, page 136—140.

As to the principle upon which the inquiry should be conducted, he spoke to the same effect as in the Wigan case.*

Principle on which inquiry should be conducted.

As to costs, he said :—

‘It seems to me costs must follow the event. There is a misapprehension with respect to costs. It is supposed that imposing the payment of costs is a sort of punishment. There is no punishment in it, nor is it intended to be so. The law does not mean it as a punishment. A petition has been brought and has failed. The Respondent has been put to expense by reason of it, and it is but reasonable that he should be indemnified against that expense. It is merely an indemnification of the expense that a man has been put to by reason of an unsuccessful suit, and there is nothing in this case to except it from the ordinary rule.’

Costs.

* Vide ante, page 192.

CASE XXIX.
BOROUGH OF DOVER.

BEFORE MR. BARON MARTIN, MARCH 23, 1869.

Petitioner: Mr. Helliott.

Respondent: Major Dickson.

Counsel for Petitioner: Mr. Serjeant Sargood and Mr. Shaw.

Agent: Mr. A. T. Hewitt.

Counsel for Respondent: Mr. Serjeant Ballantine ; Mr. Francia.

Agents: Messrs. Stevens, Wilkinson, and Harris.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

The case was opened as one of bribery and treating, but as the witnesses who were expected to substantiate these charges proved to be quite unworthy of belief, permission was asked to withdraw the whole case.

Mr. Baron MARTIN said that was the best course that could be taken under the circumstances, and therefore declared the Respondent duly elected.

Costs.

Costs followed the event.

In the course of the case,

Directions
given by agent
to witness
is evidence,

A witness was called for the Petitioner to prove that one Churchward, an agent of the Respondent, had been guilty of corrupt treating, and he was asked :—

Q. "Did Mr. Churchward give you any directions at any time?"

but not a mere statement.
(1) 165.

The question was objected to on the ground that what Churchward said to the witness was not evidence against the Respondent.

Mr. Baron MARTIN :—"A direction might be evidence; a mere statement of a fact made by Churchward to witness, and coming within the character of hearsay evidence, would not be evidence."

A. "Mr. Churchward told me not to go too fast. I suppose he meant in the way of treating, or something of that sort.

Q. "You were not to be too fast. Did he make any allusion to the previous election?"

This question was objected to on the ground that it did not come within the rule just laid down by the Court, but was allowed to be put.

Q. "Did Churchward say anything about getting the Respondent in?"

Mr. Baron MARTIN :—"That is not evidence. You may get from this witness any direction that Churchward gave him, but conversation with respect to what was the prospect of the election is going beyond that quite."

CASE XXX.

BOROUGH OF BRECON.

BEFORE MR. BARON MARTIN, APRIL 8, 1869.

Petitioners: Mr. Lucas and another.

Respondent: Mr. Howell Gwyn.

Counsel for Petitioners: Mr. Serjeant Ballantine ; Hon. E. Chandos Leigh.

Agents: Messrs. Wyatt and Hoskins.

Counsel for Respondent: Mr. Hardinge Giffard, Q.C. ; Mr. C. S. C. Bowen.

Agent: Mr. H. Roscoe.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that a voter, New, who had acted as a spy for the Petitioners' party, had, during the course of the election, received a bribe from a person who was admitted to be an agent of the Respondent.

At the commencement of the case,—

Mr. *Giffard*, for the Respondent, took the preliminary objection that the service of particulars was not such as was contemplated by the Act, inasmuch as the particulars were not delivered three days before the trial of the petition.

Mr. Baron MARTIN overruled the objection.

Mr. Baron MARTIN, in his judgment, declared the Respondent unseated, on the ground of bribery by agent.

Costs followed the event.

Non-delivery
of particulars
in time not a
bar to pro-
ceeding with
the case.

(1) 2.

Costs.

CASE XXXI.
COUNTY OF YORK, WEST RIDING
(SOUTHERN DIVISION).

BEFORE MR. BARON MARTIN, APRIL 13, 1869.

CASE I.

Petitioners: Hon. F. D. Stuart Wortley ; Mr. G. Wilton Chambers.

Respondents: Lord Milton, Mr. H. F. Beaumont.

Counsel for Petitioners: Mr. Maule, Q.C. ; Mr. Shaw ; Mr. Jeune.

Agents: Messrs. Baxter, Rose, and Norton ; Mr. Freeman.

Counsel for Respondent, Lord Milton: Mr. Serjeant Parry ;
Mr. Campbell Forster.

Agent: Mr. Gainsford.

Counsel for Respondent, Beaumont: Mr. Serjeant Parry ;
Hon. E. Chandos Leigh.

Agent: Mr. Mills.

THE petition contained the usual allegations of bribery, &c., and **prayed** that it might be declared that the Respondents were not **duly** elected, and that Messrs. Stanhope and Starkey, or one of **them**, was duly elected.

CASE II.

Petitioner: Mr. W. T. W. Spencer Stanhope.

Respondent: Mr. H. F. Beaumont.

Counsel for Petitioner: Mr. Maule, Q.C. ; Mr. Shaw ; Mr. Jeune.

Agents: Messrs. Baxter, Rose, and Norton ; Mr. Freeman.

Counsel for Respondent: Mr. Serjeant Parry ; Hon. E. Chandos Leigh.

Agent: Mr. Mills.

The petition alleged that the Petitioner had a majority of legal **votes** at the election, and prayed the seat for the Petitioner upon **a** scrutiny.

At the commencement of the case,

Particulars
delivered too
late.

Mr. Serjeant *Parry*, for the Respondent Lord Milton, stated that a list containing the names of twenty-two persons alleged to have been bribed, had been delivered to the London agent of the Respondent at 7 P.M. on the previous Saturday (it being the Tuesday); the order having been that such list should be delivered three clear days before the day appointed for the trial of the case. He submitted that, under the circumstances, the list was inadmissible.

Mr. Baron MARTIN ruled that the list not having been delivered within the time prescribed by the order was inadmissible.

Mr. *Maule*, for the Petitioners, stated that after his Lordship's decision, he could not proceed with the question of bribery, and that Case I. would be abandoned.

Recriminatory
case to be gone
into before
scrutiny.

Before the commencement of the hearing of Case II.,

Mr. *Maule*, for the Petitioner, suggested that, in order to save the time of the Court, the agents on both sides should meet and set off one vote against the other.

Mr. Serjeant *Parry*, for the Respondent, said that before the course could be adopted, the recriminatory case against the Petitioner must be gone into, for if the Petitioner was disqualified from sitting as a member, it would preclude the necessity of proceeding with the scrutiny. He then opened the recriminatory case.

In the course of the recriminatory case,

Payment of
travelling ex-
penses of voters
to induce them
to poll early.
(2) 139.

It was proved that several voters living at Penistone, whose polling-place was Sheffield, had their railway fare paid for the journey from Penistone to Sheffield by an agent of the candidate Stanhope. The Sheffield cattle fair was on the polling-day, and in any event they would have come to Sheffield that day, but the agent paid the fare in order to induce them to come and poll early.

Mr. Baron MARTIN said that, although he was of opinion that this payment of railway fares was contrary to the Corrupt Practices Act, 1854, yet inasmuch as it was a point that had not arisen before, he should not decide upon its legality himself, but should reserve it for the Court of Common Pleas.

At the close of the evidence in support of the recriminatory case, and before any decision was given thereupon,

Mr. *Maule*, for the Petitioners, stated that he had decided, with the consent of the Court, to withdraw the petition.

Leave was then given to withdraw the petition, and

Mr. Baron MARTIN, in his judgment, said, as to the withdrawal of the petition :—

“I have no doubt the course pursued by counsel is the right and proper one. In this case the objection to Lord Milton’s election was abandoned, and thereupon it became a question whether the Respondent Beaumont or Mr. Stanhope was legally elected. The direct mode of testing that would have been to have ascertained for which of them the greater number of legal votes was given, or, in other words, to have gone into a scrutiny. This would naturally have been the first question entered upon yesterday morning, when we commenced this inquiry. But that is not the course which the case took. By the 53rd section of the Parliamentary Elections Act, 1868, it is enacted that upon a trial of a petition complaining of undue return and claiming the seat, as the Petitioner did in this case, the Respondent may prove that the election of the Petitioner was undue, in the same manner as if he (the Respondent) had presented a petition against him. By virtue of that section we have been engaged these two days upon, not whether the Respondent or the Petitioner was the legally elected Member, but whether or not something had not been done on the part of the Petitioner which incapacitated him from being elected a Member at all. Supposing that question had been tried out and I had decided it against the Petitioner, the only effect would have been that the Petitioner would in any event have been prevented from sitting for the Southern Division of the West Riding of Yorkshire during the present Parliament. But whatever decision I had come to as to the question, we must then have entered upon the scrutiny before the determination of the case, because the question in the scrutiny would be which of these gentlemen had the majority of legal votes, and, assuming the Petitioner to have been personally incapacitated, that would not have affected the votes of the persons who gave their votes for him, they being ignorant of it. They would have been perfectly

Reason why in this case scrutiny dispensed with and petition allowed to be withdrawn.

good votes, and the persons who were the supporters of the Petitioner would have a right to have it determined whether or not the Respondent was sent to Parliament by a legal majority. I cannot conceive a more unsatisfactory inquiry."

Costs.

As to costs, he said :—

"There is one thing upon which I am to exercise a discretion, that is, as to costs. As to the Respondent Beaumont, assuming the case stood on the scrutiny, I would not have given costs on either side ; because I think, in a constituency of 19,000, a gentleman who has been rejected only by a majority of eight may reasonably come forward to ascertain what the true majority was. I do not mean to say that evidence might not have been given to alter my opinion, but, as at present advised, I should not have given costs on either side.

"As to the Respondent Lord Milton, the case was abandoned against him, and *prima facie* he would be entitled to his costs ; but I cannot give them. It is perfectly clear that there has been conduct on both sides, to which both sides had no idea that any objection could be taken ; that is, entertainment was given to voters upon the day of polling. Both sides seem to have given it ; and I think it was highly honourable that it was not insisted upon against the two successful candidates. It was the course that a gentleman would take ; having done it himself, he would not put it forth as illegal on the part of his opponent. Nevertheless, it was an illegal act, and I think a person standing in the position I do ought to say so."

CASE XXXII.

BOROUGH OF HASTINGS.

BEFORE MR. JUSTICE BLACKBURN, APRIL 13, 1869.

Petitioners : Calthorpe and Sutton.

Respondents : Mr. T. Brassey ; Mr. F. North.

Counsel for Petitioners, in both cases : Mr. Giffard, Q.C. ; Mr. Middleton.

Agents : Messrs. Baxter, Rose, and Norton.

Counsel for Respondent Brassey : Mr. Serjeant Ballantine ; Mr. C. S. C. Bowen.

Agents : Messrs. Wyatt and Hoskins.

Counsel for Respondent North : Mr. Powell, Q.C. ; Mr. Holland.

Agent : Mr. Durrant Cooper.

THE petitions contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that there was formed on the Liberal side an association for attending to the registration. This association paid those who lost a day's work by coming up and supporting their votes or claims. But, inasmuch as this payment was made at the time of the registration, and not immediately before the election, and inasmuch as nothing was given which enabled the men who came up to make any gain by so coming, it was held there was no evidence to show that these payments were made corruptly.

It was also proved that refreshments were provided gratis for the persons who attended the registration courts ; also that at the

municipal elections refreshments were given to voters, but there was no evidence to show that treating, on either of these occasions, was intended to influence the parliamentary election. Evidence was given to show that the wife of the Respondent Brassey had been guilty of personal bribery, but it completely failed to establish a case.

The other evidence as to bribery also broke down.

In the course of the case,—

Lavish household expenditure for the purpose of influencing election generally not illegal.

It was proved that some time previous to the election a lavish household expenditure had gone on in the establishment of the Respondent Brassey, and this was said to have been done for the purpose of influencing the election generally, but not of influencing any one voter in particular.

Mr. Justice BLACKBURN said as to this, in his judgment:—

“There is no law yet which says that any lavish expenditure in a neighbourhood with a view of gaining influence in the neighbourhood and influencing an election is illegal at all. In order to constitute anything which would be a corrupt practice in respect of expenditure of that sort, it must be made with a view of influencing a particular vote. If such an expenditure is made at a place with a tacit understanding of this kind, ‘I will incur bills and spend my money with you, if you will vote for me,’ that being not the side on which you intended to vote, if it is intended to produce that effect upon the vote, it amounts to bribery.”

Isolated act of bribery must be clearly proved.

It was proved that one Tutt, one of the Respondent's committee, was asked by a voter, whom he was bringing to the poll, for allowances for drink. That Tutt had said, “I could not do that, as it would be bribery;” but had added, “you may drink, and afterwards, when it is all over, you shall be paid.”

Mr. Justice BLACKBURN said as to this, in his judgment:—

“It is established by parliamentary law that a Member is responsible for his agents in these cases, and it is important to consider, and one must see what an agent is. I have frequently had it in my mind that there is a great difficulty, in strict logic, in making the agency of a person dependent upon the extent of

the corrupt practices committed by him. It does seem that, in strict logic, if a man would be an agent if he was shown to have corrupted 100 people by paying them £5 apiece, then if he corrupts only a single man by giving him a glass of beer, he ought to be regarded as an agent equally. There is no doubt that, in strict logical language, you will find a difficulty in making the distinction; yet I cannot but feel in administering justice, and in administering the law in such a way that it would be tolerable, one must make some distinction of that sort. There is the same thing that constitutes the man an agent in the one case present also in the other case; but I cannot but feel, where the case is a small isolated solitary case, it requires much more evidence to satisfy one of the agency than would otherwise be necessary. If a small thing is done by a person who is the head agent; for instance, in this case, if a very trifling thing had been done by Mr. Poole, who is the agent for the election expenses, I think that would have upset the election; and if small things were done to a great extent by a subordinate person, comparatively slight evidence of agency would probably have induced one to find that he was an agent. But when you come to a single case of one man telling another, whom he was inducing to go to the poll, that he would be paid afterwards for what he might spend in drink,—to make that single case upset the election would require considerable evidence of agency.”

Mr. Justice BLACKBURN, in his judgment, declared the Respondents duly elected.

As to paying the expenses of persons who attended the registration courts and supported their votes, he said:—

“The law has never yet said that to pay a person any money or to assist him in any way in being put on the register should be an offence at all. To give any money or any valuable consideration for the purpose of inducing a person to vote is a corrupt practice, and is made an offence; consequently, wherever it appears that under colour of paying people to get put upon the register, or assisting them to get put upon the register, a payment is made which is really intended to influence the vote at the ensuing election, that would be a corrupt practice, and the question in

Not illegal to assist a person with money to be put on the register, unless his vote is influenced thereby.

each case for those who have to determine the question must be whether or not those payments were made with the intention to influence the vote at the election or not, because if they were they were bribes. It is clear that as the law is framed, and as the statute is worded, to pay a person for coming to vote, giving him his day's wages or making up to him his loss of time, for the purpose of voting at the time of the election, would be a bribe. The words of the Act are clear beyond all question upon that point. But no enactment says that paying a man for coming to the registration for the purpose of supporting his claim to vote is to be in itself considered as a bribe. Consequently, one must see whether it is in effect a payment for the sake of the vote. That must be always more or less a question of evidence, upon which the person who has to decide it must draw his own inference."

As to whether giving refreshments to persons who attend the registration courts is treating, he said :—

Supplying
refreshments
to persons at-
tending re-
gistration
courts not ne-
cessarily
corrupt
treating.

"The question comes to be, was that meat and drink given with the intention to influence the election. There again in considering the question whether there was the intention which makes treating corrupt treating, which makes the giving of meat, drink, and refreshments gratis corrupt, if it be done with that intent which would make it a corrupt practice, it always comes to be a matter of very great importance, though not conclusive, to see the time when it was done, the extent to which it was done, and the manner in which it was done. I think, as far as the evidence goes here, the giving of those refreshments which were shown to have been paid for by the registration committee is distinguished from any other case, as far as I can perceive, in that it was confined to the time when the Revising Barrister was actually sitting. Taking that view of the matter, although I think it was a very foolish and unwise thing to do, it seems to me to come nearly in the same category as the payment of the men for coming to support their claims. If there was any reason to believe that it was done not merely for that purpose, but to procure popularity or to influence a vote at the election, it would be treating. But if it was merely meant and intended to be part of their coming to support their claims, and not at all to influence the election itself, it would not be corrupt treating. I think, being of no very great

extent, for extent and quantity are very material elements in the consideration, and being confined, as far as I can perceive in the evidence, to the time of the registration, I should draw the inference that it was not intended to influence the votes."

Costs followed the event.

Costs.

CASE XXXIII.
BOROUGH OF SOUTHAMPTON.
BEFORE MR. JUSTICE WILLES, APRIL 20, 1869.

Petitioner: Mr. Pegler.

Respondents: Rt. Hon. Russell Gurney, Q.C. ; Mr. P. Hoare.

Counsel for Petitioner: Mr. Serjeant Ballantine ; Mr. Nasmyth.

Agents: Messrs. Willoughby and Cox.

Counsel for Respondent, Gurney: Mr. Giffard, Q.C. ; Mr. Ledgard.

Agents: Messrs. Wilson, Bristowes, and Carpmael.

Counsel for Respondent, Hoare: Mr. Hawkins, Q.C. ; Mr. Griffiths ;
Mr. Jelf ; Mr. Lamb.

Agents: Messrs. Hayes, Twisden, Parker, and Kelly.

THE petition contained the usual allegations of bribery, &c. and prayed the seat of the Respondent Hoare, upon a scrutiny, for Mr. Moffat.

Evidence was given as to bribery and corrupt employment of voters, but there was not in any case proof of agency sufficient to invalidate the election.

The scrutiny and recriminatory charge against Mr. Moffat, one of the unsuccessful candidates, for whom the seat was prayed, was abandoned.

In the course of the case,

Corrupt act
done after
election, is

A witness Blaker was examined for the Petitioner, with a view to showing that after the election was over he had been discharged

from work by his employer because he voted contrary to his employer's wish ; he was asked,

Q. When you went back to your work after the election did you see your employer's foreman ?

A. Yes.

Q. What did he say to you ?

Mr. *Giffard*, for the Respondent, objected to the question.

Mr. Justice WILLES said :—" My impression is that what is done after the election can only be material as throwing light upon some transaction before the election, and so leading to the supposition that there was before the election some breach of section 5 of the Corrupt Practices Act of 1854. I do not think the question has ever been positively decided by any of the Parliamentary Committees."

Mr. *Giffard* : " Mr. Baron Martin in the Salford case* refused to receive evidence of what was done after an election unless some foundation was previously laid by showing that it was connected with something done before the election."

Mr. Justice WILLES : " I have had an opportunity of speaking with him on that subject, and we quite agree upon it. I think this evidence is clearly admissible, because it may throw light upon some transaction, the precise character of which is not at this moment before me. There is a very curious provision in the Parliamentary Elections Act, 1868, s. 6 (2), as to presenting petitions after the twenty-one days have gone by. It is to be in case not of any corrupt practices coming to the knowledge of the Petitioner as having taken place after the election, but in respect of bribery only. Whether that is to be read in the Corrupt Practices Act, 1854, or not, does not clearly appear. If so it can only be read in to make subsequent bribery defeat an election."

It was proved that the sons of several voters were employed upon certain work (such as the work of messengers at the election) which if given *bond fide* to their fathers would have incapacitated them from voting under section 11 of the Representation of the People Act, 1867, and if colorable would have avoided the election.

* Vide ante, pp. 136—140.

only material as throwing light on what took place before the election.
(2) 88.

Employment of son of voter if wages paid to father comes within Representation of People Act, 1867, s. 11, but unless colorable, does not avoid election.
(2).

Mr. Justice WILLES said :—" Upon these facts two questions arose. 1st. Whether the employment of a child forming part of a family, and whose wages would go, as a matter of course, into the father's pocket, is not really the employment of the father within the meaning of section 11. That question would arise upon the scrutiny, and I shall certainly hold with respect to these cases upon the scrutiny that they fall within section 11, and that the father's votes must be struck off. The 2nd question is whether such an employment of voters' sons would avoid the election. As to that I should hold that it would not, unless I came to the conclusion that the employment was colorable."

Either taking or giving a bribe invalidates vote upon a scrutiny.

A witness Harrison, having stated that he had offered his vote to one Pope in consideration that he (Pope) would find employment for Harrison's son, and that Pope had accordingly found him employment,—

Mr. Justice WILLES said, in his judgment, as to this :—

"If a scrutiny had been gone into and no farther evidence had been given in answer, the votes of both Harrison and Pope would have been struck off upon a scrutiny upon the ground that Harrison had offered himself or his vote to Pope for sale, and that Pope did procure employment for his son in order to secure his vote. If the employment were stipulated for as the price of a vote, there would be a bribe, and the persons who entered into such a contract would each of them be guilty of bribery within the statute."

Money paid to a voter to remunerate him for expenses incurred in employing assistants while voter engaged in election matters invalidates vote upon a scrutiny.

It was proved that the sum of £10 had been paid to two voters, Bencroft and Pearce, to remunerate them for the expense incurred in employing assistants to attend to their business while they were away and engaged on electioneering matters.

Mr. Justice WILLES, in his judgment, said as to this :—

"I am clearly of opinion that the payment of this sum of £10 brings these cases within the 11th section of the Representation of the People Act, 1867, and that those votes must have been struck off if the scrutiny had proceeded."

It was proved that a cabman, who was a voter, had his cab

hired for the whole day on the polling day; nothing was said to him about his vote, and he was only paid his legal fare.

Mr. Justice WILLES said, as to this :—

“According to my view of the case, it is not bribery to employ a man’s cab and pay him for it. If you promised always to go in a man’s cab provided he voted for you, that would be bribery. It has, however, to be considered upon the scrutiny whether this comes under section 11 of the Representation of the People Act, 1867. As at present advised, I think the employment of a cabman in his ordinary capacity does not come within the section. It must be some case in which the payment is substantially wages or salary for personal services. A cabman may be employed as an agent, no doubt; it may be superadded to his capacity as cabman: he could also be employed as a canvasser or a messenger; for instance, to take a letter and deliver it himself: but if you jump into a cab and go yourself, although he gets down from the box and delivers the letter at the door, you could hardly call that employment of a cabman as a messenger. At present I have a strong impression that a cabman employed to carry people about is not properly a carrier and a messenger for hire, and that that is not an employment like an agent, canvasser, clerk, or messenger, in the words of section 11.”

Employing a cabman who is a voter in the ordinary way does not come within Representation of the People Act, 1867, s. 11.
(2).

At the conclusion of the Petitioner’s case,—

Mr. Serjeant *Ballantine*, for the Petitioners, submitted that the best course would be for the Respondents to meet his case before going into the scrutiny.

Mr. Justice WILLES said that he thought the recriminatory case had better be gone into also before the scrutiny, as was done in the Northallerton case.

Serjeant *Ballantine* :—“I apprehend that if they succeed in the recriminatory case it puts an end to the case altogether, as far as the scrutiny goes.”

Mr. Justice WILLES :—“I am not so sure of that, for if you failed upon the principal case and were then defeated upon the recriminatory case, you would, as it appears to me, still have the right to go into the scrutiny for the purpose of unseating the Respondents; because if you succeeded in showing that the

If principal case fails, Respondent may be unseated upon a scrutiny, although recriminatory case has succeeded.

(2) 116.

Respondents or either of them had not a majority of legal votes, although, in consequence of the success in the recriminatory case, the defeated candidate would not be seated, still the voters would be entitled to a new election.. My recollection of the cases before committees* is that this course has been taken by at least one committee."

Mr. Justice WILLES, in his judgment, declared the Respondent duly elected.

As to the connection between municipal and parliamentary elections, he said :—

Bearing of
proceedings at
municipal
election on
parliamentary
election.

"These elections are, *prima facie*, distinct; there is no necessary connection between them, and it is not enough to show misconduct with reference to the municipal election without connecting that election in some way with the Parliamentary election. There have been cases in which it was clear that the municipal and the Parliamentary election were part of one political contest, and that corrupt action at the municipal election either was expressly intended to operate upon Parliamentary elections, or that the necessary result of what was done at the municipal election was to affect the Parliamentary election; whereupon the principle being applied that persons must contemplate the natural consequences of their acts, an intention to affect the Parliamentary election ought to be attributed both to people who were shown to have misconducted themselves with reference to the municipal election, and to agents of the Members who have been guilty of corrupt practices in the course of the municipal election, but with a view to the effect of such practices upon the Parliamentary election, or, the practices being such as must necessarily have affected the Parliamentary election. In such cases the judges have held that the two elections were, under the circumstances, really parts of one and the same political contest, and that the Members in the Parliamentary contest were bound by the acts of their agents in the course of the municipal contest. One of those cases was that of Beverley. Many remarks have been made upon the course taken by my brother Martin in that case † in dealing

* Vide ante, S.-W. Riding case, p. 215.

† Vide ante, page 150.

with what was done immediately in respect of the municipal election as having an effect upon the Parliamentary election. Whilst I concur in what was done there, I act advisedly in the present case in not taking the same course, because here the evidence fails to connect the two elections. At Blackburn* I followed the same course as was taken at Beverley (a course which I entirely approve), and held the Parliamentary election void in consequence of the intimidation practised upon workmen immediately following the municipal election, which, in my opinion, had a necessary effect upon the voters at the Parliamentary election. I mention these cases for the purpose of saying that the circumstances here are altogether different. No evidence was given in this case to connect the two elections to show that they were part of one political contest."

As to the duties of the judge in conducting these inquiries, he said :—

" I have been considering what is the duty of the judge sitting here ; whether he sits here to judge according to what is alleged and what is proved by the parties who bring the case before him, or whether he sits here as a sort of inquisitor after the case is over, so far as the parties are concerned, to enter into a general inquiry as to the state of the borough, or a special and particular inquiry with respect to individuals. My impression, as I have already stated elsewhere,† is that the case of individuals, except so far as it may be necessary to consider such a case for the purpose of determining whether the election is void or not, stands upon the same footing, so far as the duty of the judge sitting here is concerned, as a general inquiry into the state of the borough, and inasmuch as the latter does not fall within the province of the judge, so neither does the former, except in so far as the question is raised by the proceedings in the cause, or necessary to be decided for the purpose of disposing of the prayer of the petition."

Duties of the judge not inquisitorial.

Costs follow the event.

Costs.

* Vide ante, p. 199.

† Ante, p. 6.

CASE XXXIV.

BOROUGH OF STAFFORD.

BEFORE MR. JUSTICE BLACKBURN, MAY 4, 1869.

CASE I.

Petitioner : Mr. Chawner.

Respondent : Colonel Meller.

Counsel for Petitioner : Mr. Fitzjames Stephen, Q.C. ; Hon. E. Chandos Leigh.

Agents : Messrs. Chilton, Burton, and Co.

Counsel for Respondent : Mr. Giffard, Q.C. ; Mr. Motteram.

Agents : Messrs. Baxter, Rose, and Norton.

THE petition contained the usual allegations of bribery, &c., and prayed the seat for the Petitioner.

CASE II.

Petitioners : Messrs. Wild and Smallman.

Respondent : Mr. Pochin.

Counsel for Petitioners : Mr. Giffard, Q.C. ; Mr. Motteram.

Agents : Messrs. Baxter, Rose, and Norton.

Counsel for Respondent : Serjeant Ballantine ; Mr. Wheeler.

Agents : Messrs. Wyatt and Hoskins.

THE petition contained the usual allegations of bribery, &c., and prayed that the election of the Respondent might be declared void.

Case II. was taken first.

It was proved that an agent of the Respondent Pochin incited the mob to beat and molest people on the day of the election, so as to terrify a number of voters and prevent them from coming to vote.

In the course of Case II.,

It having been proved that five or six men were actually deterred from voting by reason of the violence they received from a mob,

Effect upon
election of
general intimi-
dation. How
qualified.
(2) 193.

Mr. Justice BLACKBURN said that sufficient evidence had been given of intimidation, but that the Petitioner could hardly expect the election to be declared void unless it was proved that the sitting member or some agent of his was responsible for some part of the intimidation.

Mr. Giffard, for the Petitioner, submitted that sufficient had been proved to show that the election ought to be declared void at common law, on the ground of general intimidation.

Mr. Justice BLACKBURN:—"I admit that if it is proved that there was so much intimidation that the result of the election may have been affected, it is not necessary to prove that it actually was affected. It is a question of fact whether the intimidation has been so great that you may fairly say it was not a free election, that is, if there had not been so much intimidation, such a number of persons would have voted who did not vote, that the result of the election would have been different."

Mr. Justice BLACKBURN, in his judgment, said further as to this :—"Where intimidation happens to such an extent as not to let the election be free, though not traced to the agent it will make the election void. I assent to the observation made by Mr. Giffard that in considering whether an election was free or not it would be necessary to see what was the positive majority,* and if we had entered into a scrutiny here, and the Petitioner Chawner had succeeded in establishing that he was within one or two votes,

* The numbers polled were—

Pochin, 1189.

Meller, 1124.

Chawner, 1107.

or a very small number of that sort, of Colonel Meller, then no doubt the intimidation which would not have been enough to upset the election of Pochin, who was returned by a majority of eighty, might well have affected the election of Meller; whether it would be enough would be a question to be considered afterwards."

Excessive
charities
evidence of
corrupt inten-
tion.

It was proved that a previous member for the borough had authorised his agent to spend habitually 300*l.* at Christmas in charities, and that at the Christmas immediately preceding the last election the sum distributed amounted to 720*l.*

Mr. Justice BLACKBURN said as to this in his judgment :—"I do not for a moment mean to say that there may not be many excellent charities distributed to these amounts and more by many people, but where I find that charities are distributed in a borough by those who are expecting to contest it as candidates, and distributed, without check, by the election agent of the borough, I am not charitable enough to draw any other conclusion than that they do it with the intention of giving the voters money in the hope and expectation that it will influence the future election. And there is the further very great danger attending it, that the knowledge that they have been doing it will cause men at the future elections to give their votes in the expectation and hope that they will hereafter receive payment. When that is brought home to anyone, I think it would undoubtedly mean corruption."

Candidate not
responsible for
acts of agent
who does a
corrupt act
with a view to
betray him.

It appeared that at the Unicorn public-house a committee was formed to promote the election of the Respondent Meller, of which committee one Machin was paid by Meller's agent to act as chairman. It appeared that certain voters had gone there, being really adverse to Meller, with the predetermination to take any bribe that might be offered them by Meller's side, and then to go and tell about it. Evidence was tendered to show that Machin was at the time cognisant of this plot, and was himself planning to betray Meller.

Mr. Justice BLACKBURN, in his judgment, said as to this :—"If it had been proved that this Machin, at the time that he was a

paid agent of Colonel Meller, was planning to betray him, I do not think he could any longer be considered an agent for Meller, so that his acts would vacate the election. I wish to point out the distinction which I make, that according as the law stands at present, if a member employs an agent, and that agent, contrary to his wish and contrary to his direction, commits a corrupt act, the sitting member is responsible for it, but where he employs an agent, and the agent treacherously or traitorously agrees with the other side, then if he does a corrupt act it would not vacate the seat unless it is proved that the corrupt act was at the special request of the member himself or some untainted and authorised agent of the member who directed the act to be done. The distinction is pretty obvious, and I mention it to avoid any difficulty or doubt that there might be hereafter from its being supposed that I have said anything more than I do say. I say that if Machin was a treacherous agent he loses the power of upsetting the seat by reason of his unauthorised acts of corruption; it would require actual proof of authority in order to make it so. It is a very different affair if a man, being an agent, has been tricked by the other party into committing a corrupt act, he himself honestly still intending to act as an agent."

In the course of the Respondent's case,

The agent of the Respondent having been called as a witness, and having stated that at a previous election he had acted as agent for another candidate, Mr. Bass, was asked in cross-examination by Mr. Giffard, for the Petitioner,

Solicitor privileged from answering questions relating to previous election.

(4) 23.

Q. "What did Mr. Bass spend by your means at the last election?"

A. "I think my position as Mr. Bass's private solicitor does not render it necessary for me to answer that question."

Mr. Giffard:—"The 7th section of the 26 Vict. c. 29, gets rid of that objection."

Mr. Justice BLACKBURN:—"That section relates to the present election, but I do not know that it refers back to a previous election. The general scope of the Act is to give the fullest inquiry into the pending election, but I do not know that it was intended to relax professional confidence in bygone matters. I have no

doubt as to matters that affect the present election. Unless there is some special enactment that I am not aware of, professional confidence would entitle him not to answer questions as to matters that are merely collateral. I think this is merely a collateral matter. You may ask him whether he did not pay a certain specific sum, which would show that he was guilty of bribery himself."

At the conclusion of Case II., and before Case I. was gone into,

Mr. Justice BLACKBURN said :—" I treat the evidence upon this case as applicable to both cases, except where you apply to examine or re-examine a witness."

Mr. *Giffard* (who appeared for the Respondent in Case I.) :—" Substantially this case will be my recriminatory case in the other petition."

Case I.

Without any judgment being given upon Case II., Case I. was thereupon proceeded with.

In this case it was proved that a paid agent of the Respondent Meller presided at a committee held at the Fountain Inn, and that although he did not actually pay money to voters, he had put down the names of a number of them in a list who had voted for the Respondent, as a kind of voucher that if any money was going after the election they should get part of it.

The recriminatory case against Chawner was established by proving that Chawner and Pochin stood jointly, and therefore Chawner was held disqualified to be declared elected for the same reason that Pochin's election was declared void.*

In the course of Case I.,

Upon evidence being tendered as to an alleged case of treating at the Fountain Inn,

Mr. *Giffard*, for the Respondent, objected to this case being gone into, because the Fountain Inn was not mentioned in the particulars delivered.

Case to be postponed if not mentioned in particulars.
(1) 27.

* Vide ante, page 229.

Mr. Justice BLACKBURN said that if the matter of the Fountain Inn was of importance it could come on at a later part of the inquiry, but that it should not be brought forward in the first instance; in the meantime particulars must be furnished to the other side.

Evidence having been given which tended to show that Mr. Bass, when standing as a candidate at a former election, had spent money through his agent Mr. Brough, and otherwise for the purpose of securing his return, and that afterwards the Petitioner Chawner adopted Mr. Brough as his agent and came into Mr. Bass's place so as to get part of the benefit of that corrupt expenditure,—

Is a candidate responsible for previous corrupt acts of adopted agent?
(4) 179.

Mr. Justice BLACKBURN said that this evidence caused a question to pass through his mind as to whether this would affect Mr. Chawner's seat, or in a minor degree would apply to Mr. Pochin, who had coalesced with Mr. Chawner; the point, which was a new one, appeared to him to be of some importance.

Mr. Justice BLACKBURN, in his judgment, declared the election of the Respondent Meller void on the ground of bribery by his agent; he declared the election of the Respondent Pochin void on the ground of intimidation by his agent. He declared further that in the recriminatory case against the Petitioner Chawner, it had been established that he was ineligible as a candidate.

As to the value of the evidence of spies and informers, he said:—

"There is a peculiar class of evidence occurring upon these election petitions; I mean that of witnesses who in a criminal court one would call self-discrediting witnesses,—spies, informers, and persons guilty of crime according to their own story,—who come to seek the reward that is to be got by telling the truth the other way. In a criminal court a verdict of guilty would never be permitted upon the evidence of such witnesses without confirmation. That has long ago been established. In a civil court, though they are looked upon with distrust, there is no absolute necessity that they should be confirmed. In such inquiries as these we must look upon it with considerable distrust, but still

Value of evidence of spies and informers.

treat it as information which may be true. It calls upon the other side to give evidence in order to explain how it was. In that way these witnesses are valuable, but as a general rule they should not be made the staple of a case or be too much relied upon."

General corruption avoids an election.

As to the effect upon an election of general corruption, he said :—

"There is a principle which I apprehend, though it has been very little acted upon, still exists in Parliamentary law, and is in itself good sense; that is, that if there has been general corruption, although it does not appear to have been done by any agent,—I mean either general corruption, preventing the election representing what it ought to represent, that is, the feeling of the constituents; or general intimidation, so that you may say it is evident the election is not a free one,—in that case, although it is not brought home to the agent, the election would not be good by the common law of Parliament. It must, however, be very difficult in such a case to prove, and very difficult to be able to say whether or not a case is of sufficient magnitude to amount to that."

Avoiding an election on the ground of rioting.

As to general intimidation by mobs, he said :—

"To riot and beat people, and disturb the peace of the town, is a crime in itself, and is committed for the purpose of producing an undue effect upon the election. It is very likely to happen without the members or their agents being guilty of it, but when it happens to such an extent as not to let the election be a free one, though not traced to the agent, it makes the election void. Whether it has been proved to have happened to such an extent as to make the election not free, is a question requiring great consideration, and upon it the Judge must exercise his common sense."

Costs.

As to costs, he said :—

"It seems to me that in this case, in which each side has been successful and each side has failed, I should not saddle either with the costs of the other. I treat the two petitions as really and substantially the same thing. I do not know whether Colonel Meller is himself substantially the Petitioner against Mr. Pochin, but one of the persons who was put forward as a Petitioner

acknowledged, when called as a witness, that he bore a grudge against Mr. Pochin for some cause or other; and viewing it in that way, if he is an independent Petitioner I cannot think him a very meritorious one. I must say, therefore, that each party must pay his own costs."

CASE XXXV.

COUNTY OF NORTH NORFOLK.

BEFORE MR. JUSTICE BLACKBURN, MAY 17, 1869.

Petitioner: Mr. Colman.

Respondents: Hon. F. Walpole ; Sir Edward Lacon.

Counsel for Petitioner: Mr. Serjeant Ballantine ; Mr. Littler.

Agents: Messrs. Wyatt and Hoskins ; Messrs. O. J. Taylor and Son.

Counsel for Respondent Lacon: Mr. O'Malley, Q.C. ; Mr. Blofield.

Agents: Mr. H. E. Brown ; Mr. C. Diver.

Counsel for Respondent Walpole: Mr. Rodwell, Q.C.

Agents: Mr. H. E. Brown ; Mr. C. Diver.

THE petition contained the usual allegations of bribery, treating, &c., and also a

6th allegation that the Respondents, and each of them, or one of them, personally engaged before, during, or at the election to which this petition relates as canvassers or agents, canvasser or agent, persons or a person, reported guilty of corrupt practices or a corrupt practice, by the report of Commissioners appointed in pursuance of 15 & 16 Vict. c. 57, that is to say, reported so guilty by the report of the Commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in the borough of Great Yarmouth, and which report is mentioned and referred to in the Representation of the People Act, 1867, knowing that the person or persons so engaged had been so reported guilty of corrupt practices within 7 years previous to such engagement, whereby the said election is wholly null and void.

It was proved that the Respondents stood jointly, and were so connected as to make them respectively responsible for the acts and agents of each other.

Evidence was given to show undue influence and intimidation, but the case on this point entirely failed.

Evidence was given to show corrupt treating by a Mr. Scott Chad and other persons interested in the election, and who were alleged to have been agents of the Respondents, but failed.

Evidence was also given to show personal treating by the Respondent Lacon on the day of the election, but failed.

The case, upon the 6th allegation of the petition, failed to show that the alleged employment of a scheduled person was done with the knowledge or consent of the Respondents.

In the course of the case,

It was proved that a Mr. Scott Chad was a considerable landed proprietor in the district, and that when he was asked by the Respondent's agent to be upon the committee and to act for them, he said, "No; I will not have anything to do with it, but I will answer for my own tenants." That he did, in fact, look after his tenants, and canvass them, and report to the agent the result of his canvass, which was that his tenants would all go that side. It appeared, however, that they were all ready and willing to go, and that no undue influence was used.

Agency of
landlord can-
vassing his
own tenants.

A question having been raised as to the agency of Mr. Chad,—

Mr. Justice BLACKBURN said, in his judgment, as to this :—

"Mr. Scott Chad must be considered an agent to some extent. When a man, who is asked in that way, says, "I will look after a particular set of voters, my own tenants," and he does, in fact, canvass them and nobody else does, I think he is an agent for the purpose of canvassing his tenants. I can hardly distinguish the case from the Westbury case,* where a manufacturer canvassed his own workmen much as Mr. Chad did here. No doubt there were other circumstances there—that he was put on the committee, and so on—but the real governing point was that he was put forward and consented to be the person upon whom they relied to get those voters. If Mr. Chad had been shown to

* Vide ante, p. 50.

tyrannize over his tenantry, evicting them from their dwellings, or if he had been guilty of any other act of tyranny, that would have been undue influence on his part, and consequently would have avoided the election."

Employment
of scheduled
persons.

31 & 32 Vict.
c. 125, s. 44.

In support of the sixth allegation it was proved that the name of a Mr. Preston was in the schedule of persons guilty of corrupt practices issued by the Commissioners appointed to inquire into the Yarmouth election in 1859, and that the Respondent Lacon was aware of this fact; that Mr. Preston was asked to be chairman at one or two public meetings, and was also asked by the Respondent Lacon to propose him as a candidate, and that he did so; that Mr. Preston attended the meetings of the Respondent's committee at Yarmouth; that he took an active part in its proceedings, and on several occasions acted as its chairman, and that as such he signed handbills and circulars. But it was not proved that there had been any direct personal engagement of Mr. Preston by the Respondent, or in fact that he even knew that he had acted as chairman of his committee. It appeared, however, that his agents knew it; also, that they were aware of the fact that Mr. Preston was in the schedule.

Mr. Justice BLACKBURN, in his judgment, after citing the above-mentioned section, said as to this:—

"It is to be observed, in the first place, that the Legislature have carefully confined the operation of the enactment to the candidate having 'personally engaged' the person; therefore, in order to bring the candidate, who is alleged to have committed the offence, within the enactment, it is necessary that he shall have been personally guilty of such offence. I do not construe personal guilt in the sense of doing it with his own hand in order to bring him within this section. I do not think it is necessary to show that the candidate went and spoke to the scheduled man himself and said, 'Act as my agent;' but I think the statute means that it must be brought home to his personal knowledge. If I send a man out to hire somebody in order to shoot somebody else, I am personally guilty of murder if it is done, though I hire the murderer in a roundabout way, and though I may not know who ultimately did it. I think this section means

that where what is done is done with the candidate's 'knowledge and consent,' which is the phrase used in the section immediately preceding, then it amounts to a personal engagement. I proceed further to consider what the nature of the employment of the scheduled person is to be. It must be 'as a canvasser or agent for the management of the election.' I think the sort of agency pointed at is not by any means confined to a paid agent, but I think he must be an agent for the management of the election. I do not think it is necessary that he should be an agent for the management of the whole election; it is enough if he is agent for part of the election: he must be not simply an agent who might be employed to such an extent as might make the candidate answerable for corrupt practices committed by him, but he must be employed in the way of managing a portion of the election. Supposing, for example, Mr. Scott Chad* had been scheduled, I do not think his agency was of the character pointed out by this section. The agent must be an agent having something to do with the management of the election."

A witness Burton, who had been called for the Petitioner, having been cross-examined as to the reason why he had been dismissed from his employment, with a view to shake his credit, a witness was called by the Respondents to contradict what Burton had said in cross-examination, whereupon,—

Evidence allowed to contradict a witness upon matters collateral to the issue.

(5) 39.

Serjeant *Ballantine*, for the Petitioner, objected to this evidence in contradiction of what Burton had said in cross-examination, on the ground that he had been cross-examined about a matter not relating to the issue that was being tried.

Mr. Justice BLACKBURN stated that though at *Nisi Prius* the rule was established that a collateral issue could not be gone into he did not think that that rule could be adhered to in these election inquiries.

Mr. Justice BLACKBURN, in his judgment, declared the Respondents duly elected.

As to the joint candidature of the Respondents, he said :—

* Vide ante, page 237.

Candidates
when liable
for the acts of
each other and
their agents.

“It happens that in this case the Respondents have stood jointly. They have chosen to what, we commonly call, coalesce. They united in a canvass, and, in fact, have made each an agent for the other, and they have chosen to stand or fall together: consequently, if any corrupt act is shown to be done by an agent appointed by one Member, it will affect both. Such are the consequences of a coalition. If, therefore, a corrupt act is brought home to one, both are unable to hold their seats. This, however, does not hold good as to the sixth allegation of the petition, because the Act has pointedly and markedly said that that shall be proved against the member personally. Therefore, upon that head of inquiry, necessarily and essentially the two members stand quite in separate positions, and proof personally against the one does not prove it personally against the other; so that, so far as that is concerned, their cases are separate.”

Agency.

Speaking with reference generally to the law of agency in election matters, he quoted with approval the observations of Lord Barcaple * in the Greenock case.

Undue influence.

On the question of undue influence he said, after quoting 17 & 18 Vict. c. 102, s. 5 :—

“I feel no doubt that where a person, in order to prevent another from voting or to force him to vote, either beats him or threatens injury to his person, or his house, or the like, that is undue influence; but I do not think it is confined to that. Where such a thing is done and is brought home to the agent, according to my view it avoids the election.”

Having stated that in accordance with this principle he had been compelled to unseat Mr. Pochin,† at Stafford, he further said :—

“That was a case where the injury was a wrongful, a violent injury; but I think the section is not at all confined to that. It goes on to say, ‘if he shall inflict or threaten to inflict, by himself or by or through any other person, any injury, damage, harm or loss.’ In another manner that is intimidation. I think that harm or loss is not confined to these cases; I think it would apply to cases where, though a person has a perfect right to do it if he

* Vide post, p. 251.

† Vide ante, p. 233.

not do it with the motive of affecting the vote, yet the doing so does inflict harm upon the other side. I take it that where a tenant holds his land from year to year, and the landlord can at any time give six months' notice to quit, the landlord has a perfect right to choose his tenant, and turn him out; but if the landlord does so as to inflict, or does inflict, that turning out of his tenant affects the vote, that is inflicting harm or loss within the meaning of the statute, and I think that sort of thing was intended to be struck at by the statute. So, where a person employs a servant, and the servant is continuing in his employment, and would in all probability continue so in the ordinary course of things, the master may dismiss him at pleasure, giving him proper notice, and commits no wrong in doing so; but if he does it on account of the vote or for the purpose of coercing the voter, the statute intends, I think, to make that an infliction of loss which was to be avoided.

In the *Westbury** case, where it was proved that a manufacturer exercised coercion on a large scale in order to force his workmen to vote, it was held, properly, that it was an infliction of damage or loss which, being proved to be done by an agent, was sufficient to disqualify the voter. In the *Blackburn*† and *Oldham*‡ cases it was held that though the loss and harm to be done to a man is not an illegal harm—not a matter that would be a crime, like beating a man or destroying his property, yet if it be a loss inflicted for the purpose of affecting the vote, it is brought within the scope of the statute.

Coming now to what may be called precarious loss. Suppose the case of a person who is in the habit, at intervals, of frequenting a shop and giving the tradesman some custom, if he is no longer to give that custom, but to go elsewhere,—if he is threatened to take away that custom, and go elsewhere, is that a loss or not? I think if the loss proposed to be inflicted were to such an extent and in such a way as would materially affect the saleable value of the goodwill of the man's business, it would clearly be a loss. The matter must be weighed according to the question of degree. It is not to be forgotten that the section

* Vide ante, p. 50.

† Vide ante, p. 204.

‡ Vide ante, p. 161.

enacts that the offence shall be a misdemeanour. It must be remembered, in construing the statute, that it is intended that such an infliction of loss, or such a threatening of infliction of loss, must be so serious that one could direct a jury in a criminal court to find that a person was guilty of misdemeanour."

Threat serious and deliberate, and loss, if suffered, not too remote.

Speaking then of mere threats as distinguished from actual loss, he said :—

"Where an injury has been actually inflicted, the proof is comparatively easy, but where merely a threat has been made, or what is supposed to be a threat, and not acted upon, the point is more difficult to determine. The question would be one of fact. Was this a serious and deliberate threat meant to affect the vote (though perhaps repented of and not afterwards acted upon), or merely angry words not meaning anything? When it comes to be a case of what may be called precarious benefit arising from being a customer or the like, the matter should be made out to such an extent that you might direct a jury upon an indictment to find the prisoner guilty. The maxim *de minimis non curat lex* applies to a considerable extent, and in seeing whether there is undue influence from a threat of some loss, you should see whether the loss is really considerable or not, and that the loss is not what a lawyer would call too remote."

On the question of corrupt treating, he said, after quoting 17 & 18 Vict. c. 102, s. 4 :—

Effect of word 'corruptly' in 17 & 18 Vict. c. 102, s. 4.

"All the judges have considered that the word 'corruptly' governs the whole, and that it means, with the object and intention of doing that thing which the statute intended to forbid. It does not mean corrupt in the sense in which you may look upon a man as being a knave or a villain. It is essential also that the candidate should be mixed up in it; he himself must do the act forbidden; but he need not do it with his own money or by himself personally, if he shall be in any way accessory to the giving or providing. If the agent, for whom he is responsible, does it, that, as far as voiding the election goes, has the same effect as the candidate doing it. Here comes that which governs the whole. Does he do it for the purpose of 'corruptly,' i.e., corruptly according to the intention of the statute, 'influencing such person or any other person to give or refrain from giving his

vote?' That is the key note of the statute. I take it that influencing the voters to give their votes means at the election then pending, and it comes to be a question whether or no that intention is made out as a matter of fact. I think every judge who has dealt with these matters has agreed completely with this."

With reference to treating after the election, he said :—

"It appears that in a considerable number of cases, after the election was over, in some cases a day or two after, in others two or three weeks, some landed proprietor, or squire, or large farmer, gave a dinner to his tenants and people around him, celebrating the victory their side had obtained. Now, in order to make it treating within 17 & 18 Vict. c. 102, s. 4, it is necessary that it should be done by the candidate, or that the candidate should by his agents be accessory to it; and though the statute on express terms says that if done after the election it shall be just the same as before, yet nevertheless when given after the election it must be given by the candidate, or somebody who still continues to be connected with the candidate. Now, the agency at the election which was solely from the canvassing before the election expires with the election, whether or no a person who had been requested to canvass would be an agent whose misconduct would avoid the election would depend upon the evidence; but unless there is something to show continuing authority, that person could not, if he had given a feast ten days after the election, by that act upset the election."

Treating after election—
agent's continuing authority.

Having stated, that, no doubt, the real intention with which these dinners were given was to increase the influence of the squire who gave them over his tenants and others who would be voters at any future election, he said :—

Treating with a view to future elections.

"As yet no statute has struck at that. If it is thought that such things ought to be prohibited, the Legislature must say that they intend to prohibit them."

As to the giving of meat and drink by a candidate, he said :—

"I have found that the notion has prevailed that for a candidate to give anything in the way of meat or drink was fatal to the election. That is a salutary notion, and acts as a protective machinery to the candidate, but I cannot lay down the law

Candidate giving meat and drink not necessarily corrupt.

to the full extent that that goes. But I can say that whenever a candidate or agent gives any meat or drink he does what is a foolish and imprudent thing, because it becomes a question what the intention was in doing such a thing, and if the judge who tries the case finds that the intention was to influence and affect voters, it vacates the election."

As to costs, he said :—

Costs.

"That part of the case relating to the employment of a scheduled person was very proper to investigate, and if the petition had been confined to that point alone, and had been against the Respondent Lacon only, I should not have decided that the Petitioner should pay the costs. But the petition has been brought against both members, and large expense has been incurred on matters on which there has been a complete failure of proof; there is therefore no reason to depart from the ordinary rule that costs should follow the event."

CASE XXXVI.
BOROUGH OF NOTTINGHAM.

BEFORE MR. BARON MARTIN, JULY 29, 1869.

Petitioners: Messrs. Toer, Tutin, and Southgate.

Respondent: Mr. Seely.

Counsel for Petitioners: Mr. Serjeant Parry ; Mr. Macnamara ;
Mr. Hannay ; Mr. Yeatman.

Agents: Messrs. Cockayne and Talbot.

Counsel for Respondent: Mr. Serjeant Ballantine ; Mr. Serjeant Sargood.

Agents: Messrs. Wyatt and Hoskins ; Mr. Richards.

THE petition contained the usual allegations of bribery, treating, and undue influence. The 4th allegation was, that there was rioting in the town on the polling-day to such an extent that the persons entitled to vote were prevented from voting, and that thereby it was not a free election ; and it prayed the seat for the unsuccessful candidate, Mr. Digby Seymour.

Evidence was given of bribery in two cases, but in neither of them was agency established.

The case as to treating entirely failed.

As to general rioting, it was only proved that one man was prevented by fear from voting.

At the close of the Petitioners' evidence, and after consultation, It was agreed to abandon the case, on the terms that each party should pay their own costs.

Mr. Baron MARTIN in his judgment, said :—

“This matter could not, I believe, be settled without my consent, Judge's consent necessary

to withdraw
case.

but I am satisfied that the arrangement come to is a reasonable and proper one."

As to intimidation, he said :—

Intimidation
under Corrupt
Practices Act,
1854, s. 5,
must be per-
sonal and
direct.

"The case, with respect to intimidation, is founded upon the 5th section of the Corrupt Practices Act, 1854. According to the true construction of that section, in my opinion, it means the personal direct intimidation of the voter, and does not at all refer to a general intimidation like that alleged in the 4th averment of the petition."

As to the effect of rioting upon an election, he said :—

Rioting to
avoid an elec-
tion must be
such that a
man of or-
dinary nerve
would be pre-
vented by it
from voting.

"No doubt if rioting takes place to such an extent that ordinary men, having the ordinary nerve and courage of men, are thereby prevented from recording their votes, the election is void by the Common Law, for the Common Law provides that an election should be free in the sense that all persons shall have an opportunity of coming to the poll and voting without fear or molestation. But for the purpose it must be a rioting to an extent certainly to deter a man of ordinary reasonable nerve from going to the poll."

As to the hiring of persons on behalf of the candidates, for the purpose of keeping the peace, and protecting the voters, he said :—

The peace
should be kept
by the police,
not by persons
hired for that
purpose by the
candidate.

"I must protest against the employment of such persons at all. The proper course to pursue is to go to the Mayor and communicate to him that there is a probability of the peace of the town being disturbed, and to tell him that he must perform his duty, and swear in a sufficient number of special constables to preserve the peace."

As to the wearing of favours, he said :—

Illegal to wear
favours.

"Some steps ought to be taken to prevent people from wearing favours at all. The law prohibits the wearing of favours in the most direct terms.* It does not put it so as to affect the seat, but it clearly directs that it should not be done."

* Corrupt Practices Act, 1854, s. 7.

CASE XXXVII.

BURGH OF GREENOCK.

BEFORE LORD BARCAPLE, FEBRUARY 9, 1869.

Petitioner : Mr. Christie.

Respondent : Mr. Grieve.

The Petitioner appeared in person.

Agent for Petitioner : Mr. Colin M'Culloch.

Counsel for Respondent : Mr. A. Rutherford Clark ; Mr. H. H. Lancaster ;
Mr. J. Teayner.

Agent : Mr. Thomas King.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that certain arrangements that had been made by the sheriff as to the polling places were not strictly in accordance with the statutory provisions on the subject ; it did not, however, appear that these arrangements were made otherwise than *bond fide*, or that they in any degree affected the fairness of the election.

As to corrupt practices, it was proved that the Respondent had at the commencement of his canvass, written a letter which contained the following expression, " If I go in I must do it properly to win, I do not suppose Christie is prepared to bleed freely." It was further proved that for fees to agents alone, exclusive of other expenses, the sum of more than £1700 was paid by the Respondent.

It was not, however, established that either this sum of money, or any other, was spent corruptly.

Some evidence was given of bribery and treating, but no case was established.

Procedure
analogous to
that in
the Justiciary
Court.
(1) 2.

Before the commencement of the case,

Mr. *Clark* enquired what would be the course of procedure in this case.

Lord BARCAPLE stated that the course pursued would be analogous to that in the Justiciary Court.

Evidence of
bribery not to
be excluded on
the ground
that briber's
name is not
in particulars.
(1) 207.

In the course of the case,

Upon evidence being tendered as to a case of bribery,

Mr. *Clark*, for the Respondent, objected that the name of the briber was not down in the list of particulars.

Lord BARCAPLE said that he was not at present prepared to exclude the evidence on that ground.

Evidence of
illegality in
position of
polling booth
not admissible
without a
special
allegation of it
in the petition.
(2) 5.

Evidence having been tendered to show that one of the polling-booths was connected with a public-house,*

Mr. *Clark*, for the Respondent, objected to this matter being gone into, on the ground that there was no special allegation as to this in the petition.

Lord BARCAPLE ruled that there being no such allegation in the petition, it could not be gone into as a separate subject of investigation.

Not illegal for
sheriff to take
the assistance
and advice of
the town clerk
as to the con-
duct of the
election.

It was proved that the sheriff, in the course of making arrangements for taking the poll, had communicated with, and more or less taken the assistance and advice of, the town clerk.

The Petitioner objected that this was illegal on the part of the sheriff, and more particularly so because one of the candidates was at the time of the election provost of the burgh.

Lord BARCAPLE, in his judgment, said as to this:—

“I cannot conceive that the sheriff did anything that can be looked upon as illegal in communicating with the town clerk, who has express duties to perform as to providing places in which to

* This is prohibited in Scotland by the 16 & 17 Vict. c. 28, s. 4.

poll, and by the Reform Act of last year (31 & 32 Vict. c. 48) new duties are imposed upon him, and new instructions are given to him, which imply that he is still a public officer responsibly charged with some duties in this matter. The sheriff is entitled to have from him all the assistance which he, as clerk of the burgh, could give him in the matter. From the very outset of the present system of election, the town clerk has been a person who was charged with duties in providing polling-places in burghs. By the Reform Act, 1832 (2 & 3 Will. 4, c. 65), s. 27, he was the sole person who had any functions to perform in that respect, and he was to make the division. I do not think that section of the Reform Act, 1832, has been repealed; it has been modified and added to by subsequent Acts, but I think it remains there as the basis of the whole thing, showing that the town clerk is a person who, as he has duties to perform in the matter, might well be consulted and called upon by the sheriff to give advice."

It appeared that by the arrangement made by the sheriff for taking the poll at the election, the burgh had not, in fact, been divided into districts, in pursuance of the provisions of 2 & 3 Will. 4, c. 65, s. 27, which enacts that "the sheriff shall divide the burgh into districts and appoint a convenient polling-place for each district, so that not more than 600 persons shall poll at any election at any such place," but that he availed himself of the division of the burgh into wards, made under s. 6 of 31 & 32 Vict. c. 102, and appointed in each of these wards a certain number of rooms or places for the poll to be taken at. Further, he did not assign the persons being voters living within particular portions of each ward to each new polling-place, but he divided the entire list of voters in the ward by taking them alphabetically and allotting one portion of the alphabet to one polling-place, and another portion to a second polling-place, and so on. There was not, however, any evidence to show that the fairness or the result of the election was at all affected by the arrangements that the sheriff did make.

Irregularity in arrangements as to polling places when it invalidates election.

The Petitioner, upon this, contended that the sheriff had acted contrary to the statutory provisions upon which this matter proceeds, and therefore that the election ought to be declared void.

Lord BARCAPLE, in his judgment, said as to this :—

“I do not think it incumbent upon me to pronounce any judgment upon whether there has been any contravention of those statutory provisions, but I am by no means satisfied that there has been any. The provisions in the above-mentioned statutes are not easily all read together. The truth is, that polling-places with reference to counties is an expression which has always had, and to some extent always must have, a somewhat different meaning from that which it has in burghs. A polling-place in a county is very commonly a town, and within that town, no matter where the polling-booths are situated, it is still at the same polling-place. But then there is nothing of that sort in ordinary burghs, unless you conceive that which has not, I believe, in Scotland been at all common, that you have in one of the central burghs a particular public place, which has by use or by misapprehension of the statute, from 1832 downwards, been always used as the polling-place of that burgh. But the much more ordinary thing, and that which the statutes even in their more recent provisions seem to point to is, that in burghs the place for taking the poll must necessarily be more or less fluctuating, because it is either to be a temporary booth erected where the public authorities may find a convenient space for so doing, which disappears whenever the election is over; or it is to be a room hired for the purpose from any person who has a room convenient to be hired for that purpose at that time; that is to say, it is very generally either a booth upon a piece of ground which may happen to be vacant at the time, or it is a shop, or room, or other building which at the time happens to be untenanted. That implies that necessarily there must be some degree of fluctuation, and therefore I do not know that I can say that I think that there is any very precise rule, which can be adopted by the public officers who have the charge of carrying out those provisions. I rather think that he has a latitude. I have no doubt it has always been acted upon, and I rather think that that latitude is within the statutes themselves.”

As to whether, if there had been to any extent a contravention of the statutory provisions, that contravention should invalidate the election, he said:—

“I think that these statutory provisions are of such a kind that

it would require that something much more should be made out than merely that they were transgressed in good faith, and without any serious consequence, to invalidate the election."

Lord BARCAPLE, in his judgment, declared the Respondent duly elected.

As to the principle to be applied in dealing with questions of agency in election inquiries, he said:—

"I think there are three principles applicable to three kinds of matters. There is, first of all, the strictest of all principles, that which is applicable to a criminal charge, and there you are responsible for nothing at all except your own individual guilt. That is a thing consistent with ordinary common sense. There is then the principle that is applicable to actions of a civil kind raised against a party on the ground of a wrong done, and in which it is proved that the wrong was done by the defender's agent; that is to say, a person employed by the defender while he was doing the thing he was employed to do; but there there comes in the principle, that he was employed to do the particular work, and that he was not employed to do the wrong. Then there is the third class of cases with which we are at present engaged, where, in these election petitions, it being proved that a candidate is having his election carried on by a committee or certain canvassers, those canvassers do something which, if the candidate is responsible for it, will invalidate the election. And it is held that he is responsible for it in the sense of making the validity of the election depend upon it. I do not see how these election petitions would be of the least use otherwise, because I suppose that there are very few candidates indeed who undertake the practice of corruption by their own hand. I presume there are equally few candidates, or very nearly so, who ever say to their agents that they are to proceed corruptly in the matter."

Principle to be applied to questions of agency.

Costs followed the event.

Costs.

CASE XXXVIII.

BOROUGH OF DROGHEDA.

BEFORE RT. HON. MR. JUSTICE KEOGH, JANUARY 15, 1869.

Petitioner : Sir Francis Leopold M'Clintock.

Respondent : Mr. Whitworth.

Counsel for Petitioner : Mr. M'Donough, Q.C. ; Hon. David Plunket, Q.C. ;
Mr. Ryland, Q.C.

Agent : Mr. P. J. Mayne.

Counsel for Respondent : Mr. Heron, Q.C. ; Mr. Palles, Q.C. ; Mr. Hamill.

Agent : Mr. Henry Clinton.

THE petition was as follows :—

1. Your Petitioner was a candidate at the above election.
2. Your Petitioner states that the election was holden on the 21st day of November, in the year of our Lord 1868, when Benjamin Whitworth, Francis Brodigan, and your Petitioner were candidates, and the Returning Officer has returned Benjamin Whitworth as being duly elected.
3. Your Petitioner states that upon several days immediately preceding the election, addresses and speeches of an exciting and inflammatory nature were delivered in the public streets of Drogheda by the said Benjamin Whitworth and several other persons, in his presence, and with his knowledge and consent, for the purpose of urging and inciting a number of persons to use

in order to intimidate and prevent the electors from voting for your Petitioner or the said Francis Brodigan, and to compel them to vote for the said Benjamin Whitworth.

4. A large number of men and women were hired by the said Benjamin Whitworth, or with his knowledge and consent, for the purpose of intimidating electors in order to induce them to vote for the said Benjamin Whitworth, or to refrain from voting for your Petitioner or the said Francis Brodigan.

5. Several members of the Roman Catholic priesthood improperly exercised their spiritual influence over many of the electors for the purpose of constraining them to vote for the said Benjamin Whitworth, and to prevent them from voting for your Petitioner or the said Francis Brodigan.

6. Upon the 18th day of November, 1868, the day of the nomination of candidates, the Court-house, where the election was to be held, was taken possession of by a riotous mob, consisting of the friends and supporters of the said Benjamin Whitworth, who made an attack upon your Petitioner and his proposer and second, and several other of his supporters, and by actual force expelled them from the Court-house, inflicting severe bodily injuries upon them.

7. Upon the 20th day of November, 1868, being the polling-day, several thousand persons, friends and supporters of the said Benjamin Whitworth, armed, some with firearms and others with bludgeons and sticks, attacked voters who wished and had proposed to vote for your Petitioner, and inflicted very severe wounds and other bodily injuries upon them, and forcibly prevented many of them from recording their votes, and also attacked a large body of cavalry, infantry, and police, who were acting as an escort for the protection of voters, and caused such terror and alarm in the minds of the electors, that many who had promised to vote for the said Francis Brodigan, and some who had promised to vote for your Petitioner, were induced, by intimidation, to vote for the said Benjamin Whitworth; and many electors who had promised to vote for your Petitioner, and had come long distances to do so, were most anxious to do so, if they could without risk of their persons, were deterred from going to the poll and recording their votes.

8. Your Petitioner charges that the offence of undue influence at the said election was committed by the said Benjamin Whitworth and a great number of other persons, with his knowledge and consent; and that an organised system of intimidation and violence was established by the said Benjamin Whitworth and his friends and agents; and that the said Benjamin Whitworth could at any time have restrained the rioters from acts of violence if he had been willing to do so.

9. Your Petitioner alleges that if the electors had been allowed to vote according to their wishes, without any intimidation or coercion, your Petitioner would have been returned at the above election as a burgess to serve in Parliament for the said county of the town of Drogheda.

The allegations in the petition, as to the rioting and general intimidation, having been fully established by the evidence:—

Effect on
election of
general intimi-
dation, though
an actual ma-
jority of the
constituency
polled.

Counsel were heard for the Respondent, and contended, in the first place, that, although, doubtless, individual votes might be struck off, upon a scrutiny, upon the ground of intimidation, and also, doubtless, an election might be set aside if an organised and general system either of bribery, treating or intimidation were proved, still, that before setting it aside on such a ground, it would be necessary to prove besides, that such bribery, treating, or intimidation, however extensive it might have been, had had a substantial influence upon the fate of the election; in other words, provided the Respondent had an actual majority of registered electors, be it ever so small, then no matter what happens outside, no matter how many electors are assaulted or driven from the polling-booth, no matter how many voters are hunted through the fields and obliged to go by devious ways in order to get back to their homes, no matter how much blood is shed, no matter how much spiritual intimidation has been brought to bear upon the electors; still, if the candidate who is returned upon the polling-day can say, "There are 1000 electors in the borough, and I have polled, no matter how, 501 of them," his election cannot be declared void on the ground of general intimidation, although the unsuccessful candidate may, upon a scrutiny, by striking off individual votes on this ground, show that but for the general

intimidation he would have had a majority. In support of this argument the *Roxburgh Case** was cited. In that case the Committee reported "that at the late election for Roxburgh riotous and tumultuous proceedings took place, in consequence of which, proceedings were instituted in the Justiciary Court, and certain of the offenders were convicted. That the Committee are of opinion that the riots were not of such a nature nor of so long a duration as to prevent the votes of the electors being taken at the election."

It was further argued for the Respondent that the onus of proof was upon the Petitioner to show that undue influence was exercised by the Respondent in such a way that he thereby obtained a majority, because (it was said) it was impossible for the Respondent to prove the negation of this; in other words, that the Respondent had a right to say to the Petitioner, "You are in a minority, and you must show that the mind of each voter who made up my majority has been unduly influenced."

Mr. Justice KEOGH said, as to the first part of the argument, in his judgment :—

"I must say at once that the argument put forward by the Respondent is one from which I wholly and entirely dissent. It is subversive, in my mind, of the whole principle of freedom of election. It is said by the counsel for the Respondents, that freedom of election is secured provided the majority are shown to have had the power of recording their votes. I deny that altogether. This was not solely a contest between the Respondent and the Petitioner. There is another and greater interest than belongs to either of them; there is the public interest. The humblest individual in the whole of the constituency has as good a right without fear or intimidation to come into the Court-house upon the day of the election as the richest man upon the register, and as good a right as the great majority of the constituency. Take it that a candidate has by the most legitimate means obtained the votes of nine-tenths of the constituency in his favour, yet it is of vital importance to the public weal that the remaining tenth should be able to record their votes and to express their

* Falconer and Fitzherbert's Election Cases, 367.

opinions. If the majority are not only to send their own representative to Parliament, as of course the majority must do, but if they are to drive by terror and with ignominy and with scorn and with denunciation the minority from the poll, what becomes of freedom to this country? The *Roxburgh Case* (which has been cited for the Respondent) reversed almost all antecedent decisions. Mr. Austin, who argued that case, pointed out to the Committee that among the reported cases of petitions to set aside elections on the ground of riots, there were only two since the year 1624 in which the election was not set aside. It is to be observed, too, that in this case the resolution was not arrived at unanimously, but that three out of nine of the Committee voted "that the election be set aside by reason of the premature close of the poll, whereby the electors were deprived of a portion of the period allowed by law for the exercise of the franchise."

As to the second part of the argument, he said:—

"Even if this argument were applied to the case of bribery, it might be hard, if there was an extensively organised system, to trace it to each individual voter, and in the case of treating detection would be still more difficult. But in both these cases you have something to lay your hands upon; you have money, you have food, you have drink. But when you come to the case of intimidation, who is there would venture to gauge its influence? Who can tell what is its effect upon the human mind? It is true that you may prove that a man has been told, standing outside the Court-house 'If you go in and vote for Sir Leopold M'Clintock, your brains will be dashed out.' That will show that that man has been intimidated, but will any man say that if there were half a dozen voters standing by whilst that same observation is made, the influence of that threat directed specially against him will not operate upon them? How is the limit to be fixed? How is the influence of intimidation to be traced? I will put a case which I am very sorry to say is not an imaginary one. Supposing that a minister of religion were to say to an individual voter, 'If you do not vote in a particular way, and if anything should happen to you between this time and the time at which you should reach your dwelling-house, your immortal soul—your salvation—will be perilled,' who is to say what would be the

it of the influence of that observation proceeding from the mouth of a minister of religion upon the whole of his congregation? It is not possible to give evidence in a court of justice and would carry out the proposition which has been laid down by the counsel for the Respondent here, and if at all it is to be a matter of evidence, the onus of proof should be thrown upon them to show that when the law has been violated, when outrage and intimidation has been organised, that intimidation and that violence have not produced their natural consequences, namely, terrifying the people from the exercise of their franchise."

Justice KEOGH, in his judgment, declared the Respondent's election void upon the ground of personal undue influence.

As to freedom of voting, he said :—

One of the best established rules of freedom of election is, that the electors shall come to the poll perfectly free as they are treated, that they shall not themselves accept bribes, that they shall not be treated, that they shall not be coerced, and that they shall not be intimidated; and if, as regards any single vote, it is found to the satisfaction of the Court that any such voter has been so acted upon, it is the imperative duty of the Court to declare that that is not a good vote. I am taking it now step by step first as to the question of avoiding an election. There may be many votes declared to be bad votes, there may be many men coerced or treated or intimidated at an election, but it does not necessarily follow that because of those circumstances the election is void. But I take it to be well settled law, not only by a series of decisions of Committees of the House of Commons, but decided also collaterally in cases in which such questions have been brought before the superior courts, that an organised system of bribery or of treating will invalidate an election. Surely it could not be for a moment contended that, supposing in a parish of this description banks were to open their doors, to let it be understood and known that every man who voted in a certain way would receive a sum of money, that large amounts of money were deposited for that purpose, which you might never be able to trace to the candidate, or to any one of his agents, but yet you

Effect of organised system of bribery, treating, or intimidation, not traceable to candidate or his agent.

would be able to prove that there was an organised and extensive system of bribery carried on in the borough, an election under such circumstances could be allowed to stand. Take then the case of an organised system of treating. I am speaking now of cases of which nothing could be traced to a candidate or his agent; but supposing at the head of every street food and drink were provided in large quantities, and places for eating and places for drinking opened, as to which it was known that every voter who wished to go thither, and seek for food or for drink would receive it, provided he was a voter upon the side of a particular candidate, and that that was an organised system of debauching the voters of a particular borough, although all the while not traceable to the member or his agents so as to disqualify him at future elections, is it to be supposed for a moment that such an organised system as that would not defeat an election? I take it that it is well settled that it would do so, and that there is no possibility of contesting that proposition.

“But to come to the question of general intimidation. In the *Dungarvan Case** the Chairman of the Committee, Sir Joseph Napier, in delivering judgment, said as follows:—‘Two great principles were always sought to be maintained; first, that the election should be free, and second, that the character of the candidate should be pure in regard to the election. It is very material to distinguish between acts by which an election may be avoided and conduct by which the candidate may be disqualified. . . . The avoidance of an election depends upon the effect of all acts done which interfere with the freedom required by law, but the disqualification of a candidate arises from his culpability in what he does to procure his return by undue influence. These matters are in their nature distinct, and ought not to be confounded.’

“Mr. Palles, in his argument for the Respondent, did not contend that the law as to intimidation was otherwise than similar to that as to bribery or treating, but in trying to limit the consequences to particular acts of intimidation he used this remarkable phrase, ‘the communism of intimidation.’ Now I adopt that expression,

* 2 Power, Rodwell & Dew, 325.

though probably it is not a strictly accurate one, but to my mind it conveys a good deal, and the way in which I accept it is this, that to put general intimidation upon a parallel with general bribery or general treating, it must be shown to spread over such an extent of ground, and to permeate through the community to such an extent that the tribunal considering the case is satisfied, if it be so, that freedom of election has ceased to exist in consequence. If that be the case, I for my part see no distinction between an organised system of bribery, an organised system of treating, and an organised system of intimidation."

"Costs to follow the event."

Costs.

CASE XXXIX.

BOROUGH OF LIMERICK.

BEFORE MR. BARON FITZGERALD, JANUARY 19, 1869.

Petitioners: Ryan and others.

Respondents: Major Gavin ; Mr. Russell.

Counsel for Petitioners: Mr. Heron, Q.C. ; Mr. Murphy, Q.C. ; Mr. Jol

Agent: Mr. John Elland.

Counsel for Respondent Gavin: Mr. O'Hagan, Q.C. ; Mr. Cleary.

Agent: Mr. O'Donnell.

Counsel for Respondent Russell: M'Donough, Q.C. ; Mr. Coffey, Q.C.
Mr. O'Shaughnessy.

Agent: Mr. Murphy.

THE petition contained the usual allegations of bribery, /
did not pray the seat.

Some evidence was given as to bribery, but no case v
lished.

As to treating, it was proved that a number of orders
ments was given to the partisans of the Respondents
not established, either that these orders were given for
of influencing votes, or that they did in fact influence

The last class of evidence brought forward was th
of a charge of mixed bribery and intimidation. It w
a sum of between 300*l.* and 400*l.* was expended in
before the election in giving drink to several h
throughout the city for the purpose of securing t

necessary, the force used by the opposite side. It appeared reasonable ground existed for alarm on the part of the electors' canvassers, whereupon a meeting of magistrates and electors was convened, and it was then determined to call upon the electors of the Respondents to set about providing a mob for the purpose of protecting them and counteracting the mob on the other side. This was accordingly done, but it did not appear that as a consequence of it any voters were prevented in any way from voting, or that any injury to life or property resulted from it; consequently it was held not to come within the provisions of the Corrupt Practices Act.

Mr. ARON FITZGERALD, in his judgment, declared the Respondents guilty of being corruptly elected.

In using the word "corrupt," he said:—

I am satisfied that where in the former part of the 2nd section of the Corrupt Practices Act reference is made to offers and promises made before the vote is given, the legislature clearly intended the Court to draw a *prima facie* reasonable inference from the act done as to the purpose for which it was done, leaving the other side to rebut that inference if they could. Every act done for the purposes mentioned in this Act is to be presumed to be done as done for a corrupt purpose, and once show that an act is done for any of the purposes mentioned in the Act, it immediately becomes a corrupt act, though it would otherwise have been a purely innocent one; that is to say, in some cases the act itself affords ground for reasonable inference of the intention with which the act is done, and there the legislature has not introduced the word 'corrupt;' and if the act is simply proved to be done, the Court is allowed to draw from it the ordinary reasonable inference *prima facie* that it was done for a corrupt purpose. There are other cases in which the legislature, for some reason, does not appear to have thought the inference not so strong, and in such cases it introduces the word 'corruptly' for the purpose of excluding that it did not intend the ordinary inference of intention to be relied upon. This can be easily and perfectly illustrated. Where the malicious purpose is what constitutes murder. The fact that a homicide alone is proved, the jury may infer from the

Why the word "corrupt" has been sometimes put in and sometimes omitted in the Corrupt Practices Act, 1854.

homicide alone the malicious purpose. But if the legislature had said that there must be express malice to constitute murder, the fact of homicide would be left still as raising the presumption of malice at law, and would therefore be evidence materially bearing upon the question ; but unless the facts and circumstances made out something in addition, the crime of murder would not be committed. So here, where the legislature has not introduced the word 'corruptly,' and the natural and reasonable inference from the act is that it was an act done for the purpose contemplated, the legislature has treated it as corrupt, without mentioning anything more about it. But in those cases in which it seems to have been intended that the Court should not infer the purpose simply and solely from the act, it has introduced the word 'corruptly.' The whole proof of corruption, as it appears to me, consists in showing that the forbidden act is done for a purpose not innocent according to the Act of Parliament. The legislature shows there may be the giving of entertainment to voters on account of their voting, and though that be in itself a forbidden act, it is not forbidden by the section as to corrupt practices ; therefore I think that in that case they introduced the word 'corruptly' for the purpose of showing that, beyond proving the fact of entertainment being given to the voters, you must also give evidence of the purpose."

On the question of the agency of the priests, he said :—

Agency of
Roman Catholic
clergy.

"If, as it has been admitted by the Respondents' counsel, this is essentially a Roman Catholic city, and if the influence of the Roman Catholic clergy in it be enormous ; if, more than that, from the position of the great majority of the electors of the town they naturally look to these clergymen, as being better educated men than themselves, for the management of their temporal as well as spiritual affairs—if that be so, bearing in mind the organised condition of the Roman Catholic clergy, and the fact that in every parish in the town there are at least two or three clergymen so connected with the poorer classes of voters, a question arises in which, as a body, the clergy are interested. If they make the cause of the candidate their own, and give him the benefit of having what may be equivalent in its effect upon the election to a committee-room conducted by themselves in every parish, they being the canvassers ; and if it then turns out at the time of the election that

idate represents his cause as identical with that of the
id publicly gives out that the question between him and
series is whether the clergy shall be put down or raised up,
e accompanied by them through the streets canvassing ;—
so, though the particular clergyman of the parish be not
who accompanied the candidate in canvassing, I, for my
doubt long before I say that the candidate is not, so far
ating in parliament is concerned, responsible for the acts
parties in their several districts and parishes. I can deter-
hing, but I say that it is a matter upon which my mind is
ans satisfied ; and if I were called upon to decide it now,
ession would be decidedly in favour of the liability of the
nts.”

an application being made by Mr. *Coffey*, for the Respon-
costs,

ron FITZGERALD stated that according to parliamentary Costs.
he could not give costs unless he were prepared to pro-
he petition frivolous and vexatious, which he was not
to do.

CASE XL
BOROUGH OF CARRICKFERGUS.

BEFORE MR. JUSTICE O'BRIEN, JAN. 21, 1869.

Petitioner : Mr. Torrens.

Respondent : Mr. Dalway.

Counsel for Petitioner : Mr. Faulkener, Q.C. ; Mr. Kisby.

Agents : Messrs. M'Lean and Boyle.

Counsel for Respondent : Mr. Law, Q.C. ; Mr. A. M. Porter ; Mr. W. D. Andrews.

Agents : Messrs. Andrews and Mac-Laine.

THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

Evidence was given in support of the charges of bribery and treating, but for the reasons given below it was not considered sufficient to establish a case.

Some evidence also was given as to intimidation of voters by the mob, but it was not shown to be of such extent as to affect the freedom of election.

In the course of the case,

Amendment of
particulars.

Counsel for the Petitioner applied for leave to amend the particulars, in consequence of facts which had just come to his knowledge.

Mr. Justice O'BRIEN allowed the amendment, and subsequently in his judgment he said as to this :—

“ During the progress of this case I have felt myself bound, under the provisions of the Parliamentary Elections Act, 1868, to

give every facility I could to the production of witnesses. In some respects the Petitioner came down here manifestly ignorant of the exact grounds upon which several of the charges of the Petition were founded. I therefore thought it reasonable upon a proper case being made out to allow the Petitioner to amend his bill of particulars by adding such facts as only recently came to his knowledge. I consider that in the trial of these petitions, where the purity of the election is questioned, the most searching inquiry should be instituted, and it is the duty of the Judge to afford every facility in his power to that investigation."

It was proved that after the close of the poll, the Respondent, as he was coming away from the borough, was met by a large body of people who had come out to congratulate him. Just before his arrival the Respondent's wife sent down to a public-house and had whiskey brought up and distributed among the people. It appeared that there were two voters among those people, but this was not known at the time the drink was given.

Treating after the election calculated to invite inquiry, and therefore affects question of costs.

Mr. Justice O'BRIEN said, in his judgment, as to this:—

"It cannot be said upon these facts that this drink was given corruptly within the meaning of the 4th section, though it was an act that should not have been done, and is one of the circumstances in the case which seriously affects the question of costs."*

Mr. Justice O'BRIEN, in his judgment, declared the Respondent duly elected.

As to the 4th and 23rd sections of the Corrupt Practices Act, 1854, and the difference between them, he said:—

"According to the obvious and grammatical construction of the 4th section the word 'corruptly' at the beginning of it governs the entire of the section. It is not necessary to rely upon the word 'corruptly' that occurs in the middle of the section before the word 'influencing,' because that refers to only one of the acts mentioned in the section, but the word 'corruptly' at the beginning renders it necessary that every act therein mentioned should be done cor-

Meaning of the word "corruptly." Corrupt Practices Act, 1854, ss. 4, 23.

* Vide post, p. 268.

ruptly in order to constitute an offence within that section. In the 23rd section the word corruptly is not used, and though the section does not mention the word 'candidate,' it applies as well to acts done by the candidate or his agent as to acts done by any other person. Upon those two sections of that statute what is the reasonable conclusion? That the same act of a candidate which, if it fell within the 4th section (as having been done corruptly) would disqualify him from being elected, would, if it only fell within the 23rd section, render him only liable to a 40s. penalty. There must, therefore, be a difference between the acts of the candidate which were legislated against by those two sections. As it could not be reasonably supposed that the legislature intended to subject the candidate to different penalties by the two sections for the same act, I think the difference is, that to bring the act within the 4th section so as to disqualify the candidate from being elected, the act should be done corruptly."

Referring to the case of *Cooper v. Slade*, and stating what the facts there were, he cited from the judgment of the Court of Exchequer Chamber the following portion: *—"The 4th section only prohibits the 'corruptly' giving meat and drink for the purpose of corruptly influencing a voter to give a vote. It does not prohibit the *bond fide* giving of such meat, &c., unconditionally, while section 23 absolutely prohibits any giving of refreshment to any voter on the day of nomination or day of polling on account of his having polled or being about to poll, without using any such words as 'in order to induce.'" Again,† "We think the word 'corruptly' has a definite meaning. If, for instance, there had been a previous unlawful promise conditional on the voter voting, or if there had been a previous understanding to that effect, or a corrupt bargain for the future, we think the case would have been within the statute."

He then went on to say as follows:—

"Upon the case of *Cooper v. Slade* coming before the House of Lords‡ the judgment of the Exchequer Chamber was reversed, but (as Mr. Rogers says in his book on Elections) without impugning the law as laid down by the Court. There is no decision of the

* 25 L. J. Q. B. 329.

† p. 330.

‡ 6 House of Lords Cases, 746.

House of Lords opposed to the construction I have just cited from the judgment of the Exchequer Chamber. It is true that Lord Cranworth, in his judgment, stated that he could not give to the word 'corruptly' as used in the 2nd section with reference to a payment after voting, any other meaning than a payment in violation of that which the statute was passed to prohibit. But Lord Wensleydale adds, 'I have had great doubt whether I was right in the construction which I put at the trial upon the very obscure terms of this Act, when I held that if a candidate after the election pays a voter money, the moving cause of his so doing being that the voter has given him his vote, the payment is corrupt.' "

As to treating, he said :—

"With regard to the acts which are held to constitute the offence of treating, two cases have been referred to. In the *Roscommon Case** it appeared that voters had, when they came in from the country the night before the polling day, been kept and accommodated in various refreshment-houses in the district; that was held to amount to treating, and the election was avoided. In the *Peterborough Case*† it appeared that on the morning of the declaration (that is, after the election was over) cards were issued announcing that a public dinner would be given to the successful candidate, and because the successful candidate going to the dinner paid for the wine the election was held void. That case certainly goes very far; but, with every respect for the decisions of Committees of the House of Commons, and admitting that as far as practice goes, and where a case is without precedent, they are decisions to be regarded, it will be seen that those decisions are by no means uniform on the subject of treating. Thus in the *Carlisle Case*‡ it appeared that the sitting Member's agent invited about 20 out-voters to breakfast at his house on the polling day, and that they came in conveyances hired for them on purpose; but it was proved that all the persons so invited had long before promised their votes to the sitting Member, and had been always supporters of his party; it was therefore argued that what was done was done *bond fide*, and this view was adopted by the Committee, and the election held good. Again, in the *Falkirk*

What amounts to corrupt treating.

* 1 Wolferstan and Bristowe, 107. † 2 Power, Rodwell and Dew, 259.

‡ 1 Wolferstan and Bristowe, 95.

*Case** it appeared that refreshments were supplied without stint or payment at several inns in the town on the polling day, and the election was held void; but in the *Tewkesbury Case*,† although it appeared that refreshments were supplied at the agent's house all day on the polling day, the election was held good; and similarly in the *Aylesbury Case*‡ refreshments were supplied at hotels to various voters, the agent being in and out of these hotels during the whole day, which would imply his sanction of what was done, but treating was held not to have been proved. I refer to these cases to show that the decisions of the Committees cannot be said to be uniform upon this question of treating; they are decisions which it would be difficult to reconcile one with another; and therefore we must consider each case upon the facts proved in evidence. Now, in this present case it appears to me that the result of the evidence is that all the voters who partook of refreshments at the house of the Respondent's agent had come to the poll with the express determination to vote for the Respondent, that the principal part of the drink supplied was not got till the election was virtually decided. It is not shown that previous to that day there had been any promise or announcement that such drink would be supplied, and nothing was said to any of the voters about their votes at the time of their getting the drink. This is not similar to any of the reported cases, in which it appeared that the treating was going on during the canvass, and that the candidates before the elections had solicited the votes of electors at public-houses. I cannot, therefore, come to the conclusion that the drink in this election was given corruptly, or constituted the offence of treating within the 4th section of the Act."

As to costs, after citing the Parliamentary Elections Act, 1868 s. 41, he said:—

Costs.

"As a general rule the object of this Act is to assimilate to a certain extent the practice as to costs with the rule of law that costs should follow the result. But a discretion is left to the Judge, and it is perfectly clear that under the Act such general rule might be displaced by special circumstances. Mr. Law, for

* 1 Wolferstan and Dew, 170.

† 1 Wolferstan and Dew, 111.

‡ 1 Wolferstan and Bristowe, 13.

ndent, relied very properly on the unfounded allegations made in the petition; and if it was not for other circumstances, these allegations, unsustained by evidence, and ately made, would be ground for adhering to such a rule. In my opinion, however, there are circumstances in which exempt it from the operation of that general rule. g of the drink on the polling day at the house of Gray, of the Respondent, though it was not done corruptly, and ground under section 4 for avoiding the election, was still ing much to be reprehended, and was clearly illegal : 23rd section of the Act. This transaction, and some of to which I have referred* with respect to drinking, were acter calculated to excite suspicion of undue practices, unreasonably calculated to invite inquiry. It is true giving of drink in the Committee Room was the act of the d not of the Respondent. But it must be recollected er the election law of Parliament a candidate, however nnocent of any charge, is legally answerable for the of his agents; and though the case does not come within ection, yet I cannot but hold, so far as regards the costs etition, that the Respondent is responsible for the drink en given. Upon these grounds I must refuse the Re- his costs."

* Vide ante, p. 265.

CASE XLI.
CITY OF DUBLIN.

BEFORE RT. HON. MR. JUSTICE KEOGH, JAN. 23, 1869.

Petitioners : Messrs. Woodlock and Foley.

Respondent : Sir Arthur Guinness, Bart.

Counsel for Petitioners : Mr. Heron, Q.C.; Mr. Hemphill, Q.C.; Mr. Pales, Q.C.
Mr. O'Shaughnessy.

Agent : Mr. David Fitzgerald.

Counsel for Respondent : Mr. McDonough, Q.C. ; Mr. Butt, Q.C. ; Mr. Exham
Q.C. ; Mr. Purcell, Q.C. ; Mr. Atkinson ; Mr. O'Byrne.

Agent : Mr. Frederick Sutton.

v. The petition contained the usual allegations of bribery, &c., and did not pray the seat.

iii. It was proved that eleven freemen (whose names are mentioned in the Judge's report) and from twenty to thirty other freemen (whose names did not transpire) were bribed in money by agents of the Respondent, and that forty-one out-voters were bribed by promises of payment of their travelling expenses.

iv. It was also proved that at least 200 voters were induced by agents of the Respondent to sign agreements pledging themselves to give their services gratuitously to the Respondent at the election, but that these agreements were merely colourable, and entered into to evade the provisions of the statutes as to employment of voters.

It was also proved that the Respondent had not limited by

its to any particular sum, and that the election, in fact, cost Respondent more than £15,000, though only 5587 persons paid for him.

At the commencement of the case,—

Mr. *Heron*, for the Petitioners, stated that the officers of the telegraph Company had been subpoenaed to produce certain telegrams, but that those persons did not feel at liberty to produce them without the sanction of the court.

Telegrams to be produced by telegraph company.
1.

Mr. Justice KEOGH said that he had authority beyond that of an ordinary tribunal. The telegrams must be produced.

Subsequently, Mr. Sanger, the telegraph officer, when called as a witness to produce the telegrams, said:—"My Lord, before I produce these telegrams, I must object to their production. We have always looked upon a telegram as sacred, and we think that this decision of your Lordship will shake the confidence of the public in the telegraph."

Mr. Justice KEOGH said that the opinion of the telegraph company as to this could make no difference.

The telegrams were produced.

Mr. *Mc Donough*, for the Respondent, then objected to these telegrams being read until agency had been established, but the objection was overruled.

Mr. Justice KEOGH, in his judgment, said further as to this:—

"Telegrams are nothing but electric letters, written by the candidates or their agents to electors. If such letters were in the pockets of the electors, or if copies of them were in desks of the candidates, the Petitioners of course would have a right to insist upon their production, and there is no reason why, because they are transmitted along a wire instead of being written on paper with pen and ink, they should have any greater protection."

In the course of the case,—

Mr. Justice KEOGH said, as to the amendment of particulars:—

"It is right that, following the principles of the House of Commons, lists of particulars should be given, but I will not shut out the parties in any fair case from going beyond the list. Besides, while the Legislature tells the Judge he should originate

Amendment of particulars allowed unless information wilfully kept back.
2.

an inquiry if he see reason so to do, why should I shut parties who require liberty to amend the lists. I shall allow utmost latitude to amend, unless it is a case in which I see that a party kept back information at the time the list was furnished.

91. Subsequently, at the commencement of the fourth day of the hearing of the case, an application was made to insert in the particulars the names of two persons.

Mr. Justice KEOGH allowed the particulars to be amended as requested.

Agency of members of committees to whom written instructions had been sent by respondent's agents.
65.

It was proved that in each of the eighteen wards of the county there was a district committee consisting of from eleven to twenty-five members; in one instance there were fifty-five members. The secretaries of each of these committees "instructions," as they were called, were sent, signed by the conducting agents of the Respondent. These instructions, among other things, enjoin each committee to appoint canvassers, and then went on to state what the duties of those canvassers would be. They also point out how voters were to be treated who applied for employment and what arrangements should be observed as to bringing voters to vote on the polling-day.

Mr. Justice KEOGH, in his judgment, said, as to these instructions, as follows:—

"These instructions, signed as they are by the Respondent's conducting agents, are a clear, distinct, and manifest adoption of all the members of the ward committees as agents. Here, under the hands of the conducting agents, is a distinct and positive recognition of all the members of the ward committees, and their acts are just as much the acts of the conducting agents as if they had all been separately appointed by those agents,—as if they had gone round to each of those wards and nominated every man of them, beginning at the president, down to the honorary secretary. This certainly comes within the rule laid down by Mr. Justice Willems at Windsor; by Baron Martin,[†] at Norwich; and by Mr. Justice Blackburn,[‡] at Bewdley. There is not a shadow of a doubt that a canvasser of this description is to the fullest extent capable, if

* Vide ante, p. 3.

† Vide ante, p. 10.

‡ Vide ante, p. 18.

transgresses the law, of making the candidate liable. I do not say under an indictment nor in an action for the penalties that are posed under the Act, but for the parliamentary consequences of his acts."

Mr. Justice KEOGH, in his judgment, declared the election void. As to the effect of general intimidation, he confirmed what he had said before on this subject in the *Drogheda Case*.*

As to the payment of travelling expenses, he said :—

"It is clear and settled law, as laid down by the House of Lords in the case of *Cooper v. Slade*,† recognised by Mr. Justice Willes‡ to be still law, and not, in my opinion, in any way touched by the provisions in the Corrupt Practices Act, 1854, and re-enacted except as to Galway, Cork, and Limerick, by the Representation of the People (Ireland) Act, 1868, that a promise to pay the travelling expenses of a voter conditionally upon his supporting a particular candidate, was bribery. That is the law as held by the House of Lords, and I am bound by that. But I should have thought that any conditional inducement of any kind, with or without the statute, to induce a voter to vote in a particular way, was from the earliest times clear and unmistakeable bribery.§ I must say that I cannot comprehend how you can offer anything to any man on the condition that he will vote for another, without committing bribery, and I have the greatest authority in the law of England for that proposition, if any authority were required. In the year 1784 the then Lord Stanhope introduced a bill into the House of Lords, providing that the payment of travelling expenses should be subjected to the penalties of bribery. The bill was carried through the House of Commons, and it was brought into the House of Lords by Lord Stanhope, and Lord Mansfield spoke against the bill and defeated it, saying that the paying of travelling expenses was clearly subject to the penalties of bribery, and that no statute was required to make them illegal."

Payment of travelling expenses illegal at common law.

As to costs, he said :—

"Costs follow the event."

Costs.

* Vide ante, p. 257.

† 6 House of Lords Cases, 746.

‡ Vide ante, p. 29.

§ Vide *Simpson v. Yeend*, L. R. 4 Q. B. 626.

CASE XLII.
BOROUGH OF LONDONDERY.

BEFORE MR. JUSTICE O'BRIEN, JAN. 27, 1869.

Petitioners: Messrs. McGowan and Christie.

Respondent: Mr. Dowse, Q.C.

Counsel for Petitioners: Mr. Joy, Q.C. ; Mr. Hamilton, Q.C. ; Mr. Matthew Smith.

Agent: Mr. James Hayden.

Counsel for Respondent: Mr. Palles, Q.C. ; Mr. M'Loughlin.

Agent: Mr. Forest Reid.

THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

It was proved that one Peacock was an agent of the Respondent, and evidence was given in several instances to show that he had been guilty of bribery, but this charge was not in any case made out.

It was proved that one M'Closkey, who was in gaol under a civil bill decree, was paid out by two persons named M'Intyre and Hanna, but it was not made out that they were agents of the Respondent.

Evidence was given of the employment of, and payment of wages to, a number of supporters of the Respondent, but, as they had all long before their employment promised to vote for the Respondent, it was not established that the employment was given to them in order to influence their votes.

In the course of the case,—

A witness, John Devine, having stated that he had gone into the office of Peacock, an agent of the Respondent, just before the election, to ask to be paid for his time for attending the Revising Barrister's Court,—

Particulars may be amended during the hearing of the case.

It was objected on the part of the Respondent that Devine's name was not in the list of particulars, and that therefore this matter could not be gone into; but, upon the application of Petitioners' counsel,—

(H) 47.

Mr. Justice O'BRIEN consented to the amendment of the particulars in this respect, upon a satisfactory affidavit being made by the Petitioners' agent.

Upon the affidavit being handed in,—

(J) 5.

Mr. Justice O'BRIEN inquired whether Mr. Palles desired to answer the affidavit.

Mr. *Palles* said that he wished to put some questions to Mr. *Hayden* upon his affidavit. He then asked him,—

Q. "Was the omission that you seek to supply in respect to Devine's name an error?"

A. "It was a mistake."

Q. "Whose mistake was it?"

A. "It was between counsel and myself: if I had observed at the time that Devine's name was not in the particulars, I should have put it in."

Mr. Justice O'BRIEN ruled that the amendment to the particulars should be received.

In his judgment he said further, as to this:—

"I thought it my duty, under the Parliamentary Elections Act, 1868, to make an order for the amendment of the particulars, in order that, by so doing, I might afford every facility for investigating the validity of the election. With that view I also made orders, when requested to do so by the Petitioners' counsel, to compel the attendance of witnesses and the production of documents."

It was proved that one M'Closkey had been arrested the evening before the polling-day, under a civil bill decree for about £12, at the suit of one Ramsay, a supporter of the unsuccessful candidate. On the afternoon of the polling-day, two persons,

To pay debt of a voter in order to release him from the custody of the sheriff and

enable him
to vote is
bribery.

M'Intyre and Hanna, went to the gaol, and, after some conversation with M'Closkey, paid the amount of the decree, got M'Closkey discharged, and brought him to the Court-house, where he voted for the Respondent.

Mr. Justice O'BRIEN said as to this :—

“ I have no doubt, upon this evidence unexplained, this should be deemed an act of bribery on the part of M'Intyre and Hanna. The facts of this case are essentially different from those of the *Ashburton Case*,* which was cited in the argument. And I would not regard that case as establishing the rule that money paid to get a voter out of prison in order to enable him to vote, should not, under the circumstances of this case, be considered as money paid to induce him to vote, and as therefore being an act of bribery. Every case must of course be governed by its own peculiar circumstances ; but if any such general principle were laid down, it would go far to afford a cloak for bribery and the means of evading its penalties.”

Statement
made by a
deceased per-
son is not
evidence
against the
respondent.
(M) 63.

A witness, Neilson, was called to state the circumstances under which one Peacock, who had since died, left his employment, in order to prove that Peacock was an agent of the Respondent. He was asked by Mr. Joy, for the Petitioner,—

Q. “ Did he leave your office in Dublin in order to go to Londonderry ? ”

A. “ Yes.”

Q. “ Tell us what he stated to you as his reason for going to Derry.”

Mr. *Palles* objected to any statement made by Peacock being given as evidence. He submitted that they ought to produce the person who had made the arrangement with Peacock.

* Wolferstan and Bristowe, p. 1. In this case one Tucker had issued a writ of ca. sa. against a voter, Leeman, and directed the sheriff's officer to arrest Leeman before he voted. Upon this an agent of the sitting member paid the money to Tucker, taking Leeman's bond and promissory note for the amount. Leeman then voted for the sitting member. Only a portion of the money had since been repaid by Leeman. But Leeman swore he had always intended to vote for the sitting member if he could get to the poll. The Committee held that this was not an act of bribery.

Mr. Justice O'BRIEN ruled that a statement of this sort, although made by a person now deceased, could not be given as evidence.

He was then asked,—

Q. "When he went away to Derry, was his rent in arrear?"

A. "Yes."

Q. "When he came back did he pay these arrears of rent by lodging to your credit a Bank of Ireland bill?"

A. "Yes."

Q. "How did he tell you he came by this money?"

Mr. *Palles* objected to the question.

Mr. *Joy*, in support of the question, said that the answer, when given, would connect the Respondent with Peacock as his agent.

Mr. Justice O'BRIEN :—"Peacock is dead, and although a statement made by him as to how he came by this money might perhaps be evidence as against Peacock's present representatives, still I am doubtful whether it can be used against the Respondent. I will, however, allow the question to be answered on the understanding that I am not bound to decide the case on anything that afterwards turns out not to be evidence."

It was proved that a number of voters had been employed in various ways in connexion with the election. These voters were all supporters of the Respondent, and had all promised him their votes long before their respective employments. It was contended, however, by the Petitioners, that the payments to these men for their work had been made corruptly, as being only nominally for work, or as exceeding in amount the value of the work.

Employment of supporters who vote for respondent not *per se* colourable though illegal, and likely to affect question of costs.

Mr. Justice O'BRIEN said as to this, in his judgment :—

"I think that the observations made by Baron Martin in the second *Bradford Case** bear upon the case I am now considering. There he said that he did not consider the refreshments which had been given to certain voters were given 'in order to be effected,' because they were given to men as to whom it was known beforehand how they would vote. So in this case, the

* Vide ante, p. 39.

men alleged to have been bribed by the payments made to them for the work they had done, had long previously promised to vote for the Respondent, and I see no reason to doubt that they would have voted for him, whether or not they had been so employed and paid. I cannot, therefore, sitting as a juror, come to the conclusion that any of these payments were made or given for any of the objects or purposes which are prohibited by the second section of the Corrupt Practices Act, 1854. But although this election will not be avoided by the fact that several voters, who were employed for the Respondent's election and paid for such employment, voted for him, still it is clear that their doing so was a violation of the 8th section of the Representation of the People Act (Ireland), 1868. I shall therefore take time to consider how far this illegal act, on the part of the Respondent, ought to affect his right to costs.*

Mr. Justice O'BRIEN, in his judgment, declared the Respondent duly elected.

On the question of agency, he said :—

Liability of
candidate for
volunteer agent
if not autho-
rised.

"It is clear (as held in the *Windsor Case*†) that the employment of a man as messenger is not sufficient to constitute him an agent. Mr. Justice Willes, in that case, in those accurate terms for which he is remarkable, said, 'I have stated that authority to canvass—and I purposely used the word *authority* and not *employment*, because I meant the observation to apply to persons authorised to canvass, whether paid or not for their services—would, in my opinion, constitute an agent.' I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes and to make speeches in his favour, can force himself upon the candidate as an agent, or that a candidate should be held responsible for the acts of one from whom he actually endeavours to dissociate himself."

As to the nature of the evidence necessary to establish a charge of bribery, he said :—

Charge of
bribery should
be clearly and
unequivocally
made out.

"The charge of bribery, whether by a candidate or his agent, is one which should be established by clear and satisfactory evidence. The consequences resulting from such a charge being established

* Vide *infra*, p. 279.

† Vide *ante*, p. 2.

re very serious. In the first place it avoids the election, and in the recent trial of the Warrington election petition, Baron Martin reported* to have said that he agreed with what had been said by Mr. Justice Willes at Lichfield, that before a judge upset an election, he ought to be satisfied beyond all doubt that the election was altogether void. In the next place, the 43rd and 5th sections of the Parliamentary Elections Act, 1868 impose further and severe penalties for the offence, whether committed by the candidate or by his agent. Mere suspicion, therefore, will not be sufficient to establish a charge of bribery, and a judge, in discharging the duty imposed upon him by the statute, acting in the double capacity of judge and juror, should not hold that charge established upon evidence which, in his opinion, would not be sufficient to warrant a jury in finding the charge proved."

As to costs, he said :—

"According to the general rule, the costs of these proceedings Costs. should follow the result, but the 41st section of the Parliamentary Elections Act, 1868 shows that under certain circumstances such a rule may properly be departed from, and it appeared† to me that the fact of some of the persons who voted for the Respondent having been employed on his behalf in various services for the election, and having been paid for such services, was a circumstance which might be considered as affecting, to some extent, the question of his right to costs. Under the 8th section of the Irish Representation of the People Act, 1868, such persons were not entitled to vote, and were guilty of a misdemeanor for having done so, and it is clear that on a scrutiny their votes would have been struck off. The voting of such persons was clearly an illegal act, which is expressly and for obvious purposes of public policy forbidden by the Legislature. At the trial some time was consumed, and the length of the trial was to some extent protracted, by the evidence given as to the employment and payment of the voters on this question, and I think that the Petitioners should not pay to the respondents the additional costs which were caused by the time necessarily occupied in such evidence, and which would not have been incurred but for the fact of those persons having illegally

* Vide ante, p. 44.

† Vide ante, p. 278.

voted. I shall therefore declare that the Respondent is not entitled to the costs of the day for either of the two days of the trial, viz., the fifth and sixth days, on which the principal part of such evidence as to the employment and payment of those voters was given, and I shall declare that with that exception the Petitioner shall pay to the Respondent the costs of the petition, the trial, and the other proceedings therein."

CASE XLIII.
BOROUGH OF BELFAST.

BEFORE MR. BARON FITZGERALD, JAN. 27, 1869.

Petitioners: Messrs. M'Tier and Arundell.

Respondent: Mr. M'Clure.

Counsel for Petitioners: Mr. Faulkener, Q.C. ; Mr. Kisbey.

Agent: Mr. Moore.

Counsel for Respondent: Mr. Law, Q.C. ; Mr. Porter ; Mr. Andrews ;
Mr. Randall M'Donnell.

Agents: Messrs. Andrews and McLean.

THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

It was proved that the Respondent's party promised to subscribe towards the expenses of Johnston, one of the other candidates, in order to get some of his votes split with the Respondent, and that after so promising, they did in fact pay over to Johnston's supporters the sum of 200*l*. It appeared that some of this money was spent by Johnston's supporters in bribing voters to vote for Johnston; and although, if there had been a petition against Johnston, this might have been sufficient to unseat him, still it was not established that it was a corrupt practice on the part of the Respondent's supporters which might affect the Respondent.

The evidence as to personal bribery was not considered worthy of belief.

In the course of the case,

Subscription to
Orange lodge
not a corrupt
payment.

It was proved that the Respondent gave a subscription towards an Orange lodge, although he was not an Orangeman properly so called, nor were his opinions identical with those of the lodge. It was contended on the part of the Petitioners that this was a corrupt payment within the meaning of the Corrupt Practices Act, 1854.

Baron FITZGERALD, in his judgment, said as to this :—

“The profession by a candidate of holding certain opinions is a legitimate mode of influencing votes, and if the Respondent thought that it would be for his benefit with reference to his election to inform Orangemen and others that he did entertain opinions in favour of institutions of this kind, I can see nothing illegitimate in that. The case appears to me identically the same as if he had written a pamphlet in support of such institutions as Orange halls, and had paid the printer for publishing it.”

Payment by
agent of one
candidate to
supporters of
another can-
didate, and
partly used by
them in
bribery.
Effect of as to
first candidate.

It appeared that at the last election for the borough of Belfast, which returns two members, there were several candidates, of whom the Respondent and Johnston were two. They professed very similar political opinions, but they stood as candidates quite independent of one another. Early in the canvassing for the Respondent, certain of his friends and supporters held out an assurance to the friends of Johnston that a public association, instituted for the purpose of defraying the expenses of Johnston's election, would be subscribed to by them to the amount of at least 300*l*. Just before the election, as the subscription went on very slowly (in fact but little more than 300*l*. had been altogether collected from both parties), Johnston's friends began to complain that the promises of subscriptions made by the Respondent's friends were not being carried out; whereupon the Respondent's friends proposed to give a guarantee for the payment of 500*l*. to Clarke, the treasurer of the association, and three other members of it, who were also members of Johnston's election committee. This arrangement was in the first instance agreed to by Kelly, Johnston's agent, and the guarantee was accordingly sent by Brett, the Respondent's agent, to Kelly. On its arrival, however, Kelly objected to it on the ground that money would be more useful, and sent it back to Brett. At the same time he warned Brett not to pay any money to any one but himself or Clarke, the treasurer (although some other of

Johnston's supporters, over whom Kelly had no control, were anxious to have part of it paid to them), lest, as he suggested, the money should get spent improperly, and his own client Johnston should be compromised. Nevertheless, in the face of this warning, the course ultimately adopted was to pay over 300*l.* to Kelly and Clarke, and the other 200*l.* to the supporters generally of Johnston according to their wish, and some of it was in fact spent in bribing for Johnston.

Upon these facts it was contended by Mr. *Kisbey*, for the Petitioners,

1st. That the payment of this 200*l.* to Johnston's supporters in accordance with their request, but in the face of the warning of Johnston's agent that it probably might be improperly spent, and after proof that it really was so spent, was a corrupt practice within the meaning of the 1st and 5th clauses of the Act of 1854, s. 2, so far as the election of Johnston was concerned.

2nd. Assuming the first proposition to be established, he contended that there was evidence to prove that this money had been paid by the Respondent's supporters with the hope or expectation that the effect produced upon the minds of Johnston's supporters by its payment to them would be that they would do what they would to assist the election of the Respondent, and that this payment must consequently be held to be a corrupt payment on their part for the purpose of procuring the election of the Respondent.

3rd. That even if this payment by the Respondent's agents was not to be considered as coming within the precise category of corrupt practices as defined by the Act of 1854, still that it ought to be treated as such, because the consequences of it were practically the same as those which follow the commission of a corrupt act, and those consequences were what the Act was intended to repress.

Mr. Baron FITZGERALD, in his judgment, said as to the 1st point:—

"I confess the strong inference to my mind would be that, although the real intention of the gentlemen who paid this money was to secure by *bond fide* means the return of Mr. Johnston, still there is a strong ground for holding that money so paid as this was, and after such warning especially, would be a corrupt practice so far as the election of Mr. Johnston is concerned. If money paid

to secure the return of a party means anything, it appears to me that money, so paid as this was, with almost the assurance and certainty that it will not be regularly applied, is a corrupt practice, and if it be not a corrupt practice, I find it difficult to say what the 1st and 5th clauses of section 2 mean."

As to the 2nd point, he said :—

"If I were satisfied that, however corrupt the practice was as regards Mr. Johnston's election, the only effect it could produce upon the Respondent's election was an identical one, and that that was the effect contemplated, can I make it a corrupt practice as to the election of the Respondent? It does not appear to me that the Act has said so. The true way to try it is, supposing it was so clearly a corrupt practice to secure Johnston's return that an indictment could be maintained against those parties for corrupt practice in order to procure the return of Johnston, and it further appeared that these parties hoped or expected that the effect produced upon the minds of Johnston's supporters would be that they would assist the Respondent, and that they would give their votes just in the same way as they would if the money had been directly so applied—can I say that an indictment could be sustained against them in the alternative in order to procure the election of the Respondent? If I cannot, then I say it comes to this, that it is a case not provided for by the Act."

As to the 3rd point, he said :—

"I quite agree with the Petitioners' counsel that I am to endeavour to construe this Act of 1854 so as to repress the mischief which the Act was intended to guard against. I agree, too, that for that purpose I am, so far as I can, to strip of every colour, of every dress, and of every shape, any proceeding that is proved before me in order to discover the true and real nature of that proceeding, and if, having done so, I find that that proceeding comes within the statutory definition of corrupt practices, I am bound to give effect to the Act of Parliament. But I have no power under the Act to change the nature of the proceedings as proved before me, and to repress them because those proceedings may be shown to be attended with all the pernicious consequences which the Act was intended to guard against. It appears to me that it is an application of real subtlety when one endeavours, by reason of the

mischief which follows, to alter the nature of the Act itself for the **purpose** of repressing the mischief. That is what I cannot do."

Mr. Baron FITZGERALD, in his judgment, declared the Respondent duly elected.

As to subscriptions for defraying the election expenses of a candidate, he said :—

"I have no reason to believe that a subscription instituted for the purpose of paying the expenses of a candidate and relieve him from any expense in the matter, is in any way an illegal or unconstitutional proceeding. It would behove a candidate to look well that the money of which he availed himself of his own knowledge is legitimately applied, because he incurs a responsibility the moment he holds himself out as a person to be elected by those means. But that a public subscription raised for that purpose, and contributed to by his friends and supporters, is itself illegal, I am not aware."

Subscription
for defraying
expenses of
candidate not
illegal.

As to costs, he said :—

"Costs follow the event."

Costs.

CASE XLIV.
BOROUGH OF CASHEL.

BEFORE MR. BARON FITZGERALD, FEB. 15, 1869.

Petitioner : Mr. Henry Munster.

Respondent : Mr. James Lyster O'Beirne.

Counsel for Petitioner : Mr. Butt, Q.C. ; Mr. Heron, Q.C. ; Mr. Carton.

Agents : Mr. Laffan ; Mr. Scallan.

Counsel for Respondent : Mr. Hemphill, Q.C. ; Mr. Curtis.

Agent : Mr. Peirce Grace.

v. THE 1st petition contained the usual allegations of bribery, & it also stated that the majority of votes for the Respondent was only a colourable majority, and prayed the seat for the Petitioner.

vi. A 2nd petition contained the same allegations of bribery, & and prayed that the election might be declared void.

iii. It was proved that bribery was committed with the knowledge and consent of the Respondent, such bribery consisting of payment to voters of alleged claims arising out of a previous election, and also of colourably paying large sums of money for the hire of rooms belonging to voters. In the recriminatory case it was proved that the Petitioner was guilty of bribery by his agents, and was therefore incapable of being elected.

Before the commencement of the proceedings,

Mr. *Hemphill*, for the Respondent, applied that the two petitions might be tried together.

Mr. *Heron*, for the Petitioner, opposed the application.

Mr. Baron FITZGERALD decided that the two petitions should be ~~pen~~ed together, but that he would reserve his decision as to future ~~our~~se of proceeding.

At the end of that part of the Petitioner's case which related to ~~avoi~~ding the Respondent's election, Procedure as
to scrutiny.
75.

Mr. Butt, for the Petitioner, proposed to proceed with the scrutiny, and to take each vote separately, according to the uniform practice of the House of Commons.

This was allowed, but the decisions upon the votes questioned were reserved until after the hearing of the recriminatory case.

The recriminatory case succeeded, and the scrutiny thus fell through.

In the course of the case,

Mr. Hemphill, for the Respondent, upon an affidavit made by the Respondent's agent, asked the Court to order a writ of subpoena ad testificandum to be issued to certain witnesses who were out of the jurisdiction.* Order made
for attendance
of witnesses
out of the
jurisdiction.
19.

Mr. Baron FITZGERALD granted the application.

A witness was asked,

Q. "Did you at the previous election, that in 1865, get any money from any one?" Certificate of
indemnity
does not apply
to previous
election.
107.

Mr. Baron FITZGERALD (interposing) :—"I am not sure that my certificate of indemnity will relieve him from any responsibility connected with the election of 1865."

The question was not pressed.

The Respondent, when called as a witness, was asked in cross-examination, Illegal ques-
tions not to
be asked for
the purpose of
testing credit
of witness.
129.

Q. "What did the election of 1865 cost you?"

Mr. Hemphill, for the Respondent, objected to the question.

Mr. Baron FITZGERALD did not think the question one that should be allowed.

Mr. Butt, for the Petitioner, submitted he had a right to put the question to test the credit of the witness.

* See 17 & 18 Vict. c. 34, s. 1.

Mr. Baron FITZGERALD :—" I will not allow illegal evidence to be given under the notion of credit."

Mr. *Butt* then submitted he had a right to ask him whether he committed bribery at the previous election.

Mr. Baron FITZGERALD :—" I don't think you have."

Payment of election expenses by candidate himself without the intervention of an agent.

Effect on question of personal bribery.

It appeared that, although the Respondent so far complied with the provisions of 26 Vict. c. 29, s. 2, as to declare to the returning officer upon the nomination day the name and address of an agent for election expenses on his behalf, namely, Mr. Patrick Connor, still the appointment was a purely nominal one, for Mr. Connor himself did not know of his appointment until after the election, and in fact performed no duty, and knew nothing of the expenditure by or for the Respondent on account of or in respect of the election. It further appeared that every payment that was made on account of the election was by cheques drawn by the Respondent himself, and these cheques at the trial, although ordered to be produced, were not forthcoming. Under these circumstances, and inasmuch as some of the money so paid by the Respondent was proved to have been corruptly expended,

Mr. Baron FITZGERALD, upon declaring, in his judgment, that the election was void, added as follows :—

"Owing to the unfortunate position in which the Respondent has placed himself, of taking the entire expenditure upon himself, and so leaving himself without the means of proving the nature and extent of that expenditure, I am not relieved from the painful necessity of reporting to the House of Commons that the expenditure for purposes of bribery was with the knowledge and consent of the Respondent."

Liability of Respondent for act of wife of agent.

It was proved that the wife of an agent of the Respondent had bribed a voter.

Mr. Baron FITZGERALD said as to this, in his judgment :—

"I see no way by which the Respondent can escape the consequences of an act of bribery by his agent. It was said by Mr. Hemphill, for the Respondent, that it would make a difference that the wife was the agent of Tracey. I cannot see that. In doing that which is the act of an agent, an agent may use the

strumentality of another; otherwise there would be no use in establishing any law of evidence on that point at all, for the effect on the principal through the agent would be done away with together."

It appeared that some time before the election, Laffan, an agent of the Petitioner, sent cheques for five guineas to two of the Respondent's supporters, Wood and Quirk; upon the cheques was written the word "retainer." Both Wood and Quirk, upon finding that if they accepted these retainers they would be incapacitated from voting for the Respondent, sent the cheques back. It was contended for the Respondent in the recriminatory case that this attempt to incapacitate these voters from voting was an act of bribery upon the part of Laffan.

Giving voter a "retainer" to act as agent at an election in order to incapacitate him from voting for either party, not bribery. 96, 100.

Mr. Baron FITZGERALD, in his judgment, said as to this:—

"My first impression was that it was bribery, but on consideration I am inclined to think that the object before the mind of the party in order to his being bribed must be either the abstaining from voting or the giving of the vote; and though that was the thing in the mind of the person giving these considerations or retainers, that will not make it an inducement to the other party, unless the same thing was before the mind of that party also. I cannot, therefore, say that the giving of these retainers was bribery."

In the course of the scrutiny,

Mr. *Butt*, for the Petitioner, proposed to strike off the vote of one Connor, under the Representation of the People (Ireland) Act, 1868, sec. 8.

To invalidate vote of an agent it must be proved that he was a paid agent. 76.

It appeared that Connor had been nominated before the election by the Respondent and his agent, Mr. Grace, to act as expense agent for the Respondent. Mr. Connor himself stated that he was not informed of this nomination till after the election, but Mr. Grace said that he had informed him of it, and that then Connor had replied that by so appointing him he had disqualified him from voting. However this might be, it was clear that Connor received no pay for acting as agent, and did not in fact perform any duty as such. But Mr. *Butt* submitted that the

appointment of a person as agent without an express condition that he will act for nothing is an appointment for hire.

Mr. Baron FITZGERALD, however, ruled that the vote was good.

Mr. Baron FITZGERALD, in his judgment, declared the election of the Respondent void on the ground of personal bribery, and he further declared that in the recriminatory case it had been established that the Petitioner was ineligible to be elected on the ground of bribery by agent.

As to costs, he said :—

Costs.

“The costs will follow the event with respect to each of these petitions. That is, in the case in which the Petitioner succeeds, the Petitioner is to get the costs; where the petition fails, the opposite party gets the costs.”

CASE XLV.
BOROUGH OF YOUGHAL.

BEFORE MR. JUSTICE O'BRIEN, FEB. 19, 1869.

Petitioner : Mr. Brasier.

Respondent : Mr. C. Weguelin.

Counsel for Petitioner : Mr. Heron, Q.C. ; Mr. Exham, Q.C. ; Mr. Greene.

Agent : Mr. Edward Greene Folby.

Counsel for Respondent : Mr. Butt, Q.C. ; Mr. O'Hagan, Q.C. ; Mr. Cleary.

Agent : Mr. Lawrence Mooney.

THE petition contained the usual allegations of bribery, treating, &c., and did not pray the seat.

It appeared that the Respondent announced himself as a candidate on July 29, and that almost immediately afterwards a considerable amount of treating took place, for which he was proved to be responsible through his agents. The dissolution of Parliament, in consequence of which the election was held, did not take place till August, and on it being reserved for the Court of Common Pleas to say whether the Respondent ought to be considered to have been a candidate at the time the treating took place, the Court decided that he ought, and the election was consequently held void.

Before the commencement of the case, Mr. *O'Hagan*, for the Respondent, made an objection to the right of the Petitioner to maintain the petition at all. The petition stated that the Petitioner was a voter. He submitted, however, that he was not a

Evidence admitted to show that the Petitioner, who was a voter, had himself

been bribed,
and could not
therefore
maintain
petition.

(A) 2.

voter, inasmuch as he was himself a paid agent and had been guilty of bribery and treating at the election, and had also been bribed himself: his vote, therefore, was nullified.

Mr. Justice O'BRIEN said he would consider the matter; in the meantime the case might be proceeded with.

(B) 113.

Afterwards, upon Mr. *Butt*, for the Respondent, renewing his objection to the status of the Petitioner, and stating that he proposed to call evidence in support of his objection,—

Mr. Justice O'BRIEN said that he would reserve to the fullest extent the right of the Respondent's counsel to give evidence in support of his objection.

Upon evidence being brought forward upon the point, they failed to prove that the Petitioner had been guilty of any corrupt practices, whereupon the objection was withdrawn.

Meaning of ex-
pression "can-
didate at elec-
tion."

21 & 22 Vict.
c. 87, s. 3.

(B) 24.

In the course of the case,—

Upon a public-house bill being put in by the Petitioner as evidence of treating, which bill contained items incurred before the dissolution of Parliament, Mr. *Butt*, for the Respondent, objected that it was not evidence as it stood; he submitted that no treating could take place before the dissolution of Parliament.

Mr. Justice O'BRIEN:—"Supposing a claim is incurred before the election, and satisfied after, it is impossible to say it is not evidence; it is another thing as to its weight."

Mr. *Butt*, for the Respondent, pointed out that by the 21 & 22 Vict. c. 87, s. 3, the definition in the Corrupt Practices Act, 1854, of the words "candidate at an election" is repealed, and the following definition substituted, "all persons elected to serve in Parliament at such election, and all persons nominated as candidates at such election, or who shall have declared themselves candidates on or after the day of issuing the writ for such election, or after the dissolution or vacancy, in consequence of which such writ is issued." If, then, the 4th section of the Act of 1854 (which defines treating) be read with the definition given by the 21 & 22 Vict. c. 87, he contended that a person does not become a candidate till after the dissolution, and therefore that the 4th section of the Act of 1854 would not apply to acts done by him or his agents before that time.

Mr. Justice O'BRIEN, in his judgment, said that Mr. Butt should have the credit of having first suggested this point, which was a very ingenious one. He should not pronounce any opinion on it, but reserve it for the Court of Common Pleas. He pointed out, however, that in the *Windsor Case** a transaction which had taken place before the dissolution had been relied upon as an act of treating, and that Mr. Justice Willes had held it not to be an act of treating for a different reason, and had not touched upon this point.

Subsequently when the point came before the Court of Common Pleas,†

The LORD CHIEF JUSTICE said:—"If, to ascertain the true construction of the 4th section of the Corrupt Practices Act, 1854, we substitute for the words 'every candidate at an election' the definition of that expression given by the 21 & 22 Vict. c. 87, s. 3, the section will read thus: 'If any person elected to serve in Parliament at any election, or any person nominated as candidate at any election, or any person who shall have declared himself a candidate on or after the day of the issuing of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued, shall corruptly by himself or by any person on his behalf, at any time either before, during or after any election, commit any of the acts mentioned in the section, he shall be guilty of treating.' Reading the 4th section in this way, it will contain an express enactment that every person elected to serve in Parliament, who shall corruptly by himself or by any others on his behalf, at any time either before or during or after any election, do the acts mentioned in the section, shall be deemed guilty of the offence of treating. To get rid of this obvious construction of the section, it has been suggested that we should read the section *redendo singula singulis*, and that we should hold that the words 'who shall have declared himself a candidate' are the only words applying to acts done at any time before the election. This we cannot adopt. We are quite satisfied that the rule of construction referred to, *redendo singula singulis*,

* Vide ante, p. 3.

† For a full report of the arguments of counsel, see Irish Common Law Reports, vol. iii., p. 530.

does not apply to a case like the present, and that if any person who shall be elected, or who shall be nominated, or 'who shall have declared himself a candidate,' after the issuing of the writ or dissolution, does the acts mentioned in the section, he is guilty of the offence of treating. If a party does the acts before the dissolution, intending to become a candidate, but does not, in fact, after the dissolution become a candidate and is not elected, he cannot be guilty of the statutable offence of treating. But the Respondent, having been elected, is, in our opinion, guilty of the offence, though committed before the dissolution."

Giving sums of money to poor. 17 & 18 Vict. c. 102, s. 2 (3).

It was proved that on and immediately before the polling-day, large sums of money were distributed, in shillings and half-crowns, to poor people in the streets of the borough. As much as £160 was so given away by one person, £130 by another, and £50 by another: none of this money, however, was given to voters.

Upon these facts, Mr. Exham, for the Petitioner, submitted that this distribution of money was bribery under the Corrupt Practices Act, 1854, s. 2 (3), inasmuch as it was given in contemplation that the people who got it would spend it in drink at the public-houses, and thereby in that indirect manner influence the votes of the publicans.

Mr. Justice O'BRIEN, in his judgment, said as to this:—

"Such a proceeding as this was not contemplated as being within the provisions of the Act."

Not illegal to employ watchers, *bond fide*.

It was proved that about 350 persons were employed for the Respondent's party at 3s. a day, to act as watchers; that is to say, to protect voters from any violence that might be offered by the opposite party. It appeared that watchers were absolutely necessary for this purpose, and that in consequence of their presence the election went off more quietly than elections usually did.

Mr. Justice O'BRIEN, in his judgment, said as to this:—

"Supposing that this arrangement as to watchers was made *bond fide* (as I have no doubt it was), and that it was a reasonable precaution, the only question to be considered is, whether it was in any instance carried out colourably or as a cloak for bribery or undue influence."

It appeared that in the particulars delivered by the Petitioner, twenty-eight cases of bribery were mentioned, but as to only five six of these was any evidence offered.

Particulars,
how they
ought to be
framed.

Mr. Justice O'BRIEN, in his judgment, said as to this :—

“The object of a bill of particulars is to give to the opposite party reasonable information as to the case which will be made against them; to give him an opportunity of inquiry, and to enable him, if he can, to contradict or explain the facts charged against him: but the system adopted here would defeat that object. The Petitioner might as well have included in the case all the persons who voted for the Respondent, and I cannot avoid saying that, in my opinion, this bill of particulars was either framed as a blind, and for the purpose of baffling inquiry, or that it was framed with a reckless disregard to its accuracy, and without the slightest consideration whether the charges in it were true or not. Besides, the Respondent himself is charged with personal bribery, but when called as a witness by the Petitioner, he is not asked a single question as to this charge. I think some regulations should be made with regard to such bills of particulars, and I have made these observations to express my disapprobation of the practice resorted to on this occasion, and to show that it should be discountenanced in every possible way, and should be regarded as a matter which (whatever the result of the petition may be) should materially affect the question of costs.”*

At the close of the Petitioner's case,—

Mr. *Exham*, for the Petitioner, said that if the Court should hold that under the charges contained in the Petition, as it then stood, the Petitioner was not entitled to rely upon the payments made by the sitting member to his agents of fees beyond those authorised by the 1 & 2 Geo. 4, c. 58, s. 6, which is an Act to regulate expenses of elections in Ireland, the petition should be amended as follows: “That before, during and after the election, the Respondent by himself, or by some person or persons employed by him, directly or indirectly gave money, fees, and retaining fees, to attorneys, agents, inspectors, and clerks, for doing

1 & 2 Geo. 4,
c. 58, im-
pliedly re-
pealed by sub-
sequent Acts.
Amendment of
petition
at the hearing.
(I) 21.

* Vide post, p. 298.

something relating to the election, over and above the sums set forth to be paid in the schedules to the 1 & 2 Geo. 4, c. 58, and by reason of such giving the Respondent became disqualified as a candidate and the election void."

Mr. *Butt*, for the Respondent, submitted that the Court had no jurisdiction to amend the petition, and that if permitted, the provision of the Parliamentary Elections Act, 1868, s. 6 (2), would be thereby defeated, which required the petition to be filed within 21 days of the return of the writ.

Mr. Justice O'BRIEN doubted whether he had power to permit an amendment, and if he had, he did not think he ought to do so.

Mr. Justice O'BRIEN, in his judgment, said further as to this:—

"If it were necessary to decide the point, I should be inclined to hold that that Act of Geo. 4 had been impliedly repealed. For by various Acts of Parliament passed subsequently to this Act of Geo. 4, the number of polling-days have been reduced to one, and at the same time power has been given to appoint additional polling-places. This alone would necessitate the employment of more than one conducting agent, which is all that is allowed by the Act of Geo. 4. In a county it could not now be contended as reasonable or just that a candidate should be prohibited from having more than one such agent, or that he should be allowed to pay that agent the sum prescribed for one day by the Act of Geo. 4. If he did so, he could not get persons upon whose judgment or intelligence he could rely."

Mr. Justice O'BRIEN, in his judgment, said that the final decision as to the validity of the election would be postponed until the question reserved by him had been decided by the Court of Common Pleas.*

Over-payments
to agents not
bribery.

As to whether over-payments of agents can be considered as acts of bribery, he said:—

"Considering the very penal consequences attaching to bribery, and that if these over-payments to agents were to be considered as

* The Court decided the election to be void.

ts of bribery they would be acts of personal bribery by the candidate himself who paid those agents, I cannot come to the conclusion that they could be considered as such, or that it was the intention of the Legislature to make them so; such an intention would, I think, have been expressed in clear and unambiguous terms."

As to whether the 35 Geo. 3, c. 29, s. 19, is still in force with regard to boroughs in Ireland, he said :—

"This Act of Geo. 3, so far as relates to counties, was repealed by 4 Geo. 4, c. 55, but section 79 of this Act of Geo. 4 contained a provision similar to that of section 19 of the Act of Geo. 3, except that it applied only to counties. That 79th section of the Act of Geo. 4 was itself repealed by the Corrupt Practices Act, 1854, which does not repeal or notice the Act of 35 Geo. 3, which was then unrepealed as to boroughs in Ireland, though it does repeal the Act of Will. 3, which contains similar provisions as to English boroughs. It was therefore contended by Mr. Exham, for the Petitioners, that section 19 of 35 Geo. 3 is still in force as to Irish boroughs. It, however, would require some reason to establish that the Legislature intended that a different state of law should exist in Ireland from that which exists in England, and also intended that there should in Ireland be a difference in the law of treating as regards boroughs from that which exists as to counties and counties of towns. Mr. O'Hagan (Respondent's counsel) also relied on the preamble of the Corrupt Practices Act, 1854, as showing the intention of the Legislature to have (as regards corrupt practices) the same law for all elections. That preamble states the insufficiency of the laws then in force for preventing corrupt practices in the election of a member; and that it was expedient to consolidate and amend such laws. Then the 4th section deals with some of the acts which are legislated against by the 19th section of the 35th Geo. 3, and provides that they shall constitute the offence of 'treating' if they are done 'corruptly;' the 23rd section of the Act of 1854 may also be referred to. It is clear, so far as the 19th section of 35 Geo. 3 was to remain in force, there would be no doubt that the giving of meat, food, or drink upon the day of polling would be illegal. But this 23rd section of the Act of 1854 states that doubts have arisen as to

35 Geo. 3, c. 29, impliedly repealed by subsequent Acts.

‘whether the giving of refreshments to voters on the day nomination or the day of polling be or be not according to law. Probably whoever prepared this Act had not in his contemplation the Act of 35 Geo. 3. But I fully concur in the principle clearly relied on by Mr. O’Hagan, namely, that an Act of Parliament, though not expressly repealed, is impliedly repealed by subsequent Act, the provisions of which are inconsistent with the previous Act, and I think, on that ground, I should hold that this 19th section of 35 Geo. 3 is no longer in force even as to boroughs in Ireland.”

As to reserving for the Court the question of the existence of a corrupt motive, he said :—

Only questions
of law to be re-
served for the
Court.

“The existence of a corrupt motive in doing any act is an inference to be drawn from the evidence. Under section 12 of the Parliamentary Elections Act, it is only questions of law that can be reserved for the Court, and the judge who tries the case is the only tribunal to decide whether or not the existence of a corrupt motive is to be inferred from the evidence.”

As to costs, he said :—

Costs.

“The award of costs is discretionary with the judge. The fact of the defeat of a petition would not necessarily be followed by the Petitioner paying the costs ; and on the other hand, I think it does not necessarily follow that a successful Petitioner should get his costs. There have been repeated instances before the Parliamentary Committees where, although the member was unseated, he was not condemned to pay costs. I have already referred to circumstances which I think furnish grounds for the exercise of that discretion,* and for disallowing costs to the Petitioner should he ultimately succeed by the decision of the Court of Common Pleas. And on the other hand, I think that should the Petitioner ultimately fail by the decision of the Court of Common Pleas, there are reasons for disallowing costs to the Respondents. With regard to the grounds for disallowing costs to the Petitioner, it is clear upon the evidence that so far as he himself is concerned, the question of costs is one of perfect indifference to him, because he is indemnified by Sir Joseph M’Kenna ; and in point of fact, as

* Vide ante, p. 295.

as costs are concerned, the question may be considered as if this was the petition of Sir Joseph M'Kenna."

After the decision of the Court of Common Pleas, he further added, as to costs, as follows:—

"One of the reasons, as I said in the course of the case,* why I think the Petitioner is not entitled to costs, is on account of the character of his bill of particulars. Although it contained specific charges of the bribery of 78 electors, no charge was proved, and as to several of them no evidence was offered. It appeared to me that these numerous and unfounded charges were either inserted for the purpose of baffling inquiry by the number of cases about which inquiry was to be made; or were inserted at hazard, without any reasonable grounds, and with a complete indifference as to their being well founded or not. Another reason is, considering the unsuccessful candidate as himself in fact the Petitioner, the conduct pursued previous to the election of those who acted with him may well be relied on as disentitling him to costs. Besides this, there is another thing to be taken into consideration, and that is, that up to the trial of the petition the unsuccessful candidate has failed to send in the detailed statement of election expenses, as he was bound to do under 26 Vict. c. 29, s. 4. For these reasons I shall not order the Respondent to pay the general costs of these proceedings, with the exception of costs of arguing the special case before the Court of Common Pleas. I reserved that question at the instance of the Respondent, and I therefore think it reasonable that he should pay the Petitioners' costs of that argument."

* Vide ante, p. 295.

CASE XLVI.
BOROUGH OF SLIGO.

BEFORE RT. HON. MR. JUSTICE KEOGH, FEB. 19, 1869.

Petitioners : Messrs. Foley and Foley.

Respondent : Major Knox.

Counsel for Petitioners : Mr. Coffey, Q.C. ; Mr. Palles, Q.C. ; Mr. Waters, Q.C. ;
Mr. O'Loughlin.

Agent : Mr. Michael Malony.

Counsel for Respondent : Mr. McDonough, Q.C. ; Mr. James Robinson, Q.C. ;
Mr. W. H. Kay, LL.D. ; Mr. Hartigan.

Agent : Mr. Lawder.

v. THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

iii. It was proved that a number of voters were bribed by persons whose agency was clearly established.

iv. It was also proved " that a system of intimidation and violence was organized and carried out for months previous to, and during the election, subversive of freedom of election, and endangering the lives and properties of the electors, that outrages were committed previous to, and during the election, which deterred electors from exercising their franchise at the election, but such intimidation and violence was almost entirely practised by large mobs of persons acting in opposition to the Respondent."

It was further proved that such intimidation was continued in the borough from the time of the election down to and during the trial of the election petition, and the venue was in consequence

changed to Carrick-on-Shannon, under the power given for that purpose by the Parliamentary Elections Act, 1868, s. 11 (11).

In the course of the case,

It having been proved that one Cherry had bribed several persons, upon Cherry being called as a witness by the Respondent to rebut agency,

Witness not bound to criminate himself, but see 26 Vict. c. 29, s. 7. 136.

Mr. Justice KEOGH said :—" I think I ought to tell Mr. Cherry the position he is in. You are now about to be examined, Mr. Cherry, as to transactions which involve a criminal offence : there is strong evidence of your having been engaged in a criminal transaction. You are not, therefore, bound in any way to give evidence which will tend to criminate yourself. At the same time, if you choose to make a full and satisfactory disclosure, not in part but in all things, you are entitled to ask me for a certificate of indemnity."

At the close of the witness's evidence,—

Mr. Justice KEOGH refused to give him a certificate, on the ground that his disclosures had not been either full or trustworthy.

Mr. Justice KEOGH, in his judgment, declared the Respondent unseated, upon the ground of bribery by his agents.

As to the law of agency, he said :—

"An observation was made by the counsel for the Respondent that the evidence ought to be strong—very strong, clear, and conclusive of agency before a judge allows himself to attach the penalties of the Corrupt Practices Prevention Act, 1854, to any individual. I agree in that. But it would be altogether a mistake, both in law and fact, to think that you can depute individuals to do certain things, or that they should take upon themselves to do certain things with your sanction, and that you can escape the consequences of their acts by afterwards stating, whether or not upon oath, that you did not contemplate those acts being done when you gave the authority which constitutes agency. Agency is a result of law to be drawn from the facts in the case, and from the acts of individuals, and it is not by what a principal tells me upon the table that he intends to do, that I am to con-

Liability of candidate for act of agent.

ELECTION PETITIONS.

...solve the question of agency ; but I am to decide that question and the question of intention itself, not from the words of an individual now, but what I conceive to be the natural and necessary consequence of his acts and words at the time he gave any authority. If it were otherwise it would be open to any man, if he was a man of good character and of unquestionable reputation, to tell a particular individual to go forth and be his agent ; afterwards to come up upon the table when that agent had transgressed all moral duties and to say, I never intended that he should do anything wrong ; all I intended he should do was what was legitimate and lawful. But I lay down this proposition most distinctly, that no sitting member can guard himself against the consequences of the acts of agents, if once they are proved to be agents, by coming before the Court and swearing, even though he may convince the Court he is swearing truly, that he never intended that anything illegal should be done at an election. It is not what he intended, as he explains here, but it is what authority did he give, and did the acts of the person so authorized, legal or illegal, naturally follow the authority which was given ? A common and familiar instance occurs to my mind ; the wherryman upon the river does not arrive one moment the less certainly at his destination because he happens to be rowing one way and looking another."

As to how long the consequences of an act of bribery endure, he said :—

Consequences
of an act of
bribery,
duration of.

"Any act committed previous to an election with a view to influence a voter at the coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed on the day before the election or the day of the election ; nay, more, if any man commits bribery in any constituency in the first week of a Parliament, and if he asks for the suffrages of the constituency in the last week of the seven years of that Parliament, if it lasted so long, that act committed six years before can be given in evidence against him, and his seat would be forfeited."

As to costs, he said :—

Costs.

"The Respondent must pay the costs of the petition."

CASE XLVII.

BOROUGH OF GALWAY.

BEFORE RT. HON. MR. JUSTICE KEOGH, FEB. 25, 1869.

Petitioner : Mr. Thomas McGovern.

Respondents : Lord St. Lawrence ; Sir Roland Blennerhasset, Bart.

Counsel for Petitioner : Mr. Heron, Q.C. ; Dr. Seeds.

Agent : Mr. McGovern.

Counsel for Respondent, Lord St. Laurence : Mr. M'Donough, Q.C. ; Mr. Palles, Q.C. ; Mr. O'Brien.

Agent : Mr. Macnamara.

Counsel for Respondent, Blennerhasset : Mr. Waters, Q.C. ; Mr. Coffey, Q.C.

Agent : Mr. Redington.

THE petition contained the usual allegations of bribery, &c., and finally charged undue influence exercised by means of the Roman Catholic clergy, acting for and on behalf of the sitting members, who both by addresses from the altar during divine service and by other means, threatened loss and damage, and in other manners practised intimidation upon the electors who were members of the Roman Catholic persuasion, in order to induce them to vote or to refrain from voting at the election.

The principal evidence against Lord St. Lawrence consisted of a white paper book, headed "names of persons who by letters have made claims as agents, clerks, &c., against Lord St. Lawrence in reference to the Galway borough election, 1868." It appeared that the book was not prepared till after the election ; it contained 133 names, and there were remarks on most of these names in parallel columns shewing their "qualifications," "by whom recom-

mended," &c. It was contended that all the claims contained in this book were more or less colourable, but this was not proved.

Against the other Respondent evidence was given to show that at the previous election a great deal of bribery had taken place in his behalf, but that the bribes had not actually been paid till long after the election, and that they in fact related as much to the present election as the last. This was not, however, established.

The evidence which affected the two Respondents jointly was that as to spiritual intimidation practised by the priests. It was proved that a considerable amount of influence had been exercised by the priests in favour of the two Respondents, and that in several instances the mass had been suspended and the congregations had been addressed and exhorted to support them, but it was not established that this influence had been more than might legitimately and properly have been exercised.

In the course of the case,

Not necessary to close case as to bribery before going into case as to intimidation. (1) 271.

Evidence as to the charges of bribery was first gone into, and upon a witness being called, who, it appeared from the particulars, was to speak to the charge of intimidation,

Mr. *McDonough*, for the Respondents, reminded the Court of the practice of the House of Commons Committees that the case of bribery should be closed before that of intimidation was opened.

Mr. Justice KEOGH thought that it was not necessary to enforce that rule now ; he should leave the matter to the discretion of counsel.

Evidence of intention to pay bribes after hearing of petition concluded, inadmissible, because in that case fresh petition might be presented. Parliamentary Elections Act, 1868, s. 6 (2).

It having been proved that considerable bribery had taken place at the previous election, (viz., in 1865,) but that the bribes had to a great extent been not actually paid until after the hearing of the petition which had been presented as to that election,

Dr. *Seeds*, for the Petitioner, submitted in the course of his reply that there was evidence that bribes had been promised, and that it was intended to pay them in a similar way as soon as the hearing of this present petition was concluded.

Mr. Justice KEOGH said, in his judgment, as to this :—

“I will at once meet the remark that has been addressed to me, that it is within the bounds of possibility that notwithstanding this

investigation further sums of money will be claimed and paid. Since the election of 1865 an Act of Parliament* has been passed, under which if either of the sitting members or any of their agents pay in respect of the election one shilling at any time between this present hour and the last hour of the session of this present Parliament, for 28 days after every such payment a new petition can be presented to the Court of Common Pleas in Dublin, and if such a payment be proved, the seat of the sitting member is just as effectually gone as it would be upon this inquiry."

Mr. Justice KEOGH, in his judgment, declared the Respondents duly elected.

As to undue influence, after citing the 5th section of the Corrupt Practices Act, 1854, and also citing what he had said on the subject of general intimidation in his judgment in the Dublin case,† he said :—

"I see no reason to qualify in any way a single word which I stated in that judgment. That I believe to be the law as laid down by the greatest authorities, and of that I believe no happier exposition was ever given than in the celebrated argument of Sir Samuel Romilly in the case of *Huguenin v. Baseley*.‡ In that case it was sought to set aside a voluntary settlement made by a widow upon a clergyman and his family, on the ground that it had been obtained by undue influence and abused confidence by the clergyman as an agent undertaking the management of this lady's affairs. Sir Samuel Romilly speaks in his argument of this undue influence, and I adopt his words as marking what I conceive to be the limit between due and undue influence. They were as follows :— 'Undue influence will be used if ecclesiastics make use of their power to excite superstitious fears or pious hopes, to inspire, as the objects may be best promoted, despair or confidence' (that is, to inspire despair or confidence in order to attain their own objects, be they what they may), 'to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of eternal happiness.' Now, what is the necessary consequence, if that is a true version of influence? Is it that the in-

What political influence exercised by priests is legitimate.

* Parliamentary Elections Act, 1868, s. 6 (2).

† Vide ante, p. 273.

‡ 14 Ves. 288.

fluence of the clergy is to be excluded. I say not. The Bishop of Galway, in answer to the question put to him in cross-examination, 'Did you say that if the people were estranged from their clergy, and were not obedient to their clergy, they would escape from all legitimate authority?' said 'Yes.' I say so too.

"It has in the argument been said rather hastily, and I am sure without meaning to argue such a proposition, that if the priests use influence at all, the election will be void. The Roman Catholic bishop is in the eyes of the law of this country a commoner, and as such the legislature has given him a vote, and he has a right to exercise that privilege. The Protestant Episcopalian minister has the same right, and so has the Presbyterian minister. The landlord has his vote, and his tenants have their votes, and is it to be said that the landlord is to use no influence with his tenants? I deny the proposition altogether. I say that it is right and becoming that a landlord should use his influence with his tenants, and so long as he does not exercise that influence in an illegitimate manner, no steadier or safer or more legitimate influence can be used. Then, I ask, are the only persons in the community who are not to be at liberty to exercise their legitimate influence the bishops and clergy of the Roman Catholic church? I meet with a positive negative any such assumption; but, as I said before, that influence must be legitimately exercised. In support of what I have just said, I quote the *Mayo Case*,* 1853, where the committee, which was composed entirely of Protestants, came to this resolution:—'That it appears from the evidence that there was great abuse of spiritual influence on the part of a great body of the Catholic priesthood during the last election;' yet they declared the sitting members duly elected. I do not mention this case as expressing my concurrence in that decision. If I had come to the resolution they came to, I should also have arrived at the conclusion that the members were not duly elected. I now come to a case of an opposite kind. In the *Mayo Case*,† 1857, Colonel Higgins was the unsuccessful candidate, and it was proved that the Catholic priest told the people from the altar that 'the curse of God would come down upon any one who voted for Colonel

* 2 Power, Rodwell & Dew, 20.

† 1 Wolferstan & Dew p. 1.

Higgins,' and that 'if they were dying he would not give the rites of the Church to any one voting for Higgins,' and much more evidence of a similar kind was given. Upon that evidence the committee came to the conclusion that the sitting member by his agents was guilty of undue influence and spiritual intimidation, and that the election was void. In the present case every description of charge has been made against the Catholic clergy ; among other things, they are charged with having refused the rites of the church, in order to influence votes at the election. If that had been proved in a single case I would have avoided the election ; I would not have hesitated a moment about it. But that has not been proved. It has, however, been proved that in various churches the celebration of the mass was suspended after the first Gospel in order to lecture the people upon the conflicting claims of the different candidates. I think it would be well that the House of God should not be made a place for delivering political discourses in at all ; but I pass that by as a matter of trifling importance. I recognise the full right of the Catholic clergy to address their congregations, to tell them that one man is for the country, that another man is against the country ; nay more, I would not hold a very hard and fast line as to language which in excited times may be used by Catholic ecclesiastics or by civilians. They may be impatient and zealous and wrathful, provided they do not surpass the bounds of what is known to be legitimate influence."

As to costs, he said :—

" I have carefully considered the question, and I think that Costs.
various circumstances in the case amply justified a petition against both the Respondents. I therefore direct that all parties should pay their own costs."

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ELECTION PETITIONS.



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OF THE
DECISIONS OF THE JUDGES
FOR THE TRIAL OF
ELECTION PETITIONS
IN ENGLAND AND IRELAND,
PURSUANT TO
THE PARLIAMENTARY ELECTIONS ACT, 1868.

BY
EDWARD LOUGHLIN O'MALLEY, Esq.,
AND
HENRY HARDCASTLE, Esq.,
BARRISTERS-AT-LAW.

VOL. II.



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CASE I.

BOROUGH OF WATERFORD.

BEFORE MR. BARON HUGHES, JAN. 20, 1870.

Petitioners : Messrs. Slattery and Corrigan.

Respondent : Sir Henry Winston Barron, Bart.

Counsel for Petitioners : Mr. Serjeant Armstrong ; Mr. Hackett.

Agents : Messrs. Strange and Wall.

Counsel for Respondent : Mr. Heron, Q.C. ; Mr. Waters, Q.C. ; Mr. Crean.

Agent : Mr. Robert Barron.

THE petition contained the usual allegations of bribery, &c., and prayed the seat for the unsuccessful candidate, Mr. Ralph Bernal Osborne.

It appeared that the Respondent had stood as a candidate for the borough off and on for 38 years ; that after the election of 1865 he had made payments to persons who had voted for him partly out of charity, and partly as compensation for their votes. For the election of 1868, he appointed as his personal agent a relation, named Marcus Barron. At the time of, and immediately after the election of 1868, considerable bribery was carried on by an organised system of payments made by one Allen, who had received money from one Wall, who had got what he paid to Allen from Marcus Barron. Within twelve months of the election of 1868 the present election took place, and it was proved that at this election several persons were bribed by Allen in the same way as at the previous election.

In the course of the case,

Inference as to
agency from
agency at pre-
vious election.

It was proved that at the previous election in 1868, which took place less than twelve months before the present one, the Respondent had appointed his cousin, Marcus Barron, to act as his personal agent. At that election Marcus Barron had handed over various sums of money to be employed in bribery to one Wall, who passed it on to one Allen, and an organised system of bribery was carried on by Allen with this money. At this election Marcus Barron continued to act as before for the Respondent, but Wall ceased so to act, and it did not appear that there was any regular reappointment of Allen as agent, or that he was in any way authorised on this occasion to canvass for the Respondent. However he did canvass for the Respondent in the same way as he had done previously, and it was proved that he bribed several voters.

25.

Mr. Baron HUGHES, in his judgment, said, as to the liability of the Respondent for Allen's act at this election :—

“One of the consequences of that organised system of bribery which existed at the last election, and so short a time ago, was, in my opinion, this, that it would be difficult, scarcely possible, for the Respondent to sever his present election from it. I think if he had placarded Mr. Allen's house from top to bottom ‘no longer agent of mine,’ it would not in itself have severed the connexion: it would still be a subject for the decision of a judge occupying this place, whether it was *bond fide*, or merely an attempt to carry out in another way the object of bribery. There is nothing, in my opinion, which would have severed the connexion but one of two things, either the death of Mr. Allen—his ceasing to live—or to live in this country, or his doing what Mr. Wall did, going over to the opposite side. There is nothing else by which a judge would be conclusively bound to declare that the connexion was severed.”

Decision as to
validity of
vote challenged
on scrutiny,
not to be given
till principal
case finished.

(1) 2.

Mr. Serjeant *Armstrong*, in opening the Petitioner's case, submitted that the evidence he was about to offer as to one Gaule having been bribed, would be applicable not only to the principal case, but also for the purpose of invalidating the vote of Gaule upon the scrutiny.

Mr. *Heron*, for the Respondent, submitted that in the first

instance, and until the principal and recriminatory cases were finished, no decision should be given as to the validity of any individual vote, and that when the period of the trial arrived for the scrutiny, he, Mr. Heron, would be entitled to make his statement, and go into evidence, and have his lordship's decision on each vote separately.

Mr. Baron HUGHES acceded to the arrangement.

A witness, Gaule, who was called to prove that he had been bribed by one Allen, stated "about two o'clock on the polling day, a voter, Cahill, came up to me. I asked him 'what news?' he said 'Good news, come with me to Mr. Allen.' So we went. When we found Mr. Allen he put down my name in a book, and said, 'Go on, Cahill, and see Gaule vote.'" I then went and voted for the Respondent.

Conversation after election over inadmissible without previous proof of agency.

(1) 18.

Gaule was then asked,

"Had you any conversation with Cahill after the election was over?" (1) 19.

Mr. Heron, for the Respondent, objected that before agency was proved, what Cahill said after the election was over was not evidence, though what he said before the election was over might be.

Mr. Baron HUGHES:—"Is it denied that Cahill is an agent of the Respondent?"

Mr. Heron:—"Certainly."

Mr. Baron HUGHES:—"If he was an agent, I apprehend the conversation the next day would be just as much evidence as a conversation taking place while the election was going on."

Mr. Heron:—"Certainly, but at present there is not the slightest proof of Cahill being our agent."

The question was not put.

Mr. Serjeant *Armstrong* applied for an order for the attendance of one John May. He stated that the process server had used every effort to serve him with a subpoena, but without effect, though there was reason to believe he was in his house.

Order for attendance of witness when granted.

(3) 238.

The application was granted.

(3) 310.

Mr. *Heron* applied for an order for the attendance of one Brophy.

Serjeant *Armstrong* submitted that before the order was made some proofs should be given of the attempts to serve with a subpoena.

The bailiff was then called, but from his evidence it appeared that he had only once attempted to serve him, whereupon

Mr. Baron HUGHES declined to make the order.

Particulars.
Effect of limiting evidence.

(4) 1.

Upon one Delany being called as a witness to prove that he had been bribed,

Mr. *Heron* said that if it was sought to set aside his vote on the ground that he had been bribed, he must object on the ground that his name was not in the particulars.

Serjeant *Armstrong*:—"We did not discover his name till Saturday" (it was then Monday).

Mr. Baron HUGHES to Mr. *Heron*:—"If anything should arise you shall have the amplest opportunity of meeting the case. There is not a man in Waterford that I will not have here if he can give any information."

Witness not appearing, examination deferred.
6 (130).

At the close of the Petitioner's case,

Mr. Serjeant *Armstrong* asked that liberty should be reserved to him to examine a witness, Smith, who had been called up on his subpoena, but had not appeared.

Mr. Baron HUGHES stated that up to the last moment of the trial he would hear any application for the examination or re-examination of any witness, if he was satisfied that it was *bond fide* and could not have been done before.

Mr. Baron HUGHES, in his judgment, declared the election of the Respondent void on the ground of bribery by agent. He also declared that the recriminatory case had failed, and the Petitioners had failed upon the scrutiny in establishing the claim of Mr. Osborne to the seat.

Costs.

As to costs, he said:—

"This petition has succeeded, and the recriminatory case has failed, therefore the Petitioners are entitled to their costs of this

petition, properly and necessarily incurred. But I wish it to appear upon the face of my judgment, in awarding these costs, that I exclude expressly the costs of all the witnesses who have not been examined. Of necessity growing out of the nature of the case—it being necessary to subpoena every one who appeared to be open to the suspicion of corruption—subpoenas were served upon almost every voter on the Respondent's side. I think that is an expense, which in point of speculation it was necessary for the Petitioners to incur, but which in point of burden ought not to be thrown upon the Respondent."

As to the costs of the scrutiny,

Mr. *Heron*, for the Respondent, applied that the costs of those days which had been consumed in going into cases in which the Petitioners failed might be borne by the Petitioners in accordance with the decision in the Londonderry case.*

Mr. Baron HUGHES :—"I have looked at the case, and I have come to the conclusion that I ought not to follow it here for this reason. Substantially all the witnesses produced for the scrutiny were absolutely necessary for the general case, and in this case, more perhaps in any other that I know of, the scrutiny was of necessity mixed up with the avoidance of the seat. The whole costs of the scrutiny must therefore be borne by the Respondents."

* Vol. i. 279.

CASE II.
COUNTY OF LONGFORD.

BEFORE RT. HON. MR. JUSTICE FITZGERALD, MARCH 28, 1870.

Petitioners : Messrs. Broderick and others.

Respondent : Hon. Reginald Greville-Nugent.

Counsel for Petitioners : Mr. Butt, Q.C. ; Mr. Exham, Q.C. ; Mr. Munroe.

Agent : Mr. Hanly.

Counsel for Respondent : Mr. Serjeant Armstrong ; Mr. McLaughlin.

Agent : Mr. Reynolds.

The petition commenced by alleging—

1. That on Thursday, December 23, 1869, a writ of election was issued out of the High Court of Chancery in Ireland to the high sheriff of the County of Longford for the election of a member to serve in parliament for the same county.
2. That the said writ was duly received by the said sheriff on Friday, December 24.
3. That the said sheriff gave no notice of holding any election pursuant to the said writ within two days of the receipt of the same, as required by the statute in that case made and provided.
4. That on Monday, December 27, the said sheriff caused notice to be given of an election to be held on Friday, December 31. . . . being a day sooner than

the sixth day from the date of giving of the said notice.

and it went on to state in paragraph 37

That the said election was illegally held by the said sheriff because the notice for the said election was not given within two days after the receipt of the writ, and also because six days' notice of the said election was not given as required by the statutes in that case made and provided, the said election having taken place sooner than the sixth day from the signing and giving of the said notice.

The petition further contained the usual allegations of bribery, undue influence, and treating both by the Respondent himself and by his agents.

All the charges in the petition broke down, except that of treating, as to which it was proved that drink had been distributed in such a systematic way both to electors and non-electors that the treating was corrupt within the meaning of the statute.

Before the commencement of the case,

Mr. Butt, for the Petitioners, called the attention of the Court to the first four allegations in the petition, and submitted that the election was void on the grounds there stated. By 1 Geo. 4, c. 11, it is enacted "that immediately after the receipt of the writ making an election for any county in Ireland the sheriff shall forthwith thereon the date of receiving the same, and shall within five days after the receipt of such writ cause proclamation of the time and place of holding such election to be made, and on the next day give public notice of a special County Court to be holden for the purpose of the election," which election (the Act goes on to say) shall be holden on some day not later from the day of making such proclamation than the 16th day and not sooner than the 10th day. This Act is amended as to the day for holding the election by 25 & 26 Vic. c. 92, s. 1, which enacts that the day of holding the election shall be not later from the day of making the proclamation than the twelfth day, and not sooner than the 10th day. Again by 31 & 32 Vic. c. 112, s. 38, the Act of

1.
Irregularity
as to time of
holding elec-
tion.

ELECTION PETITIONS.

25 & 26 Vic. c. 92, s. 1, is amended by enacting that the election is not to be held sooner than the fourth day after the proclamation. In this case the sheriff received the writ on Friday, December 24, but did not make the proclamation until Monday, 27th, and fixed the election for Friday, 31st. Under these circumstances, he contended that the election was void, inasmuch as the proclamation was not made within two days after the receipt of the writ.

Mr. Justice FITZGERALD stated that at present his opinion was adverse to Mr. Butt's contention as to the election being void, but that if necessary, he would call upon Mr. Serjeant Armstrong to answer it.*

In the course of the case,

Amendment of particulars in consequence of facts subsequently discovered.

12.

The following decisions were given as to the amendment of particulars by adding names of persons charged with corrupt practices.

A witness, Murtagh, was asked by Mr. Exham, for the Petitioners, as to a statement made by one Father Skelly, in order to prove that Father Skelly had been guilty of intimidation,

Whereupon Serjeant *Armstrong*, for the Respondent, objected that Skelly's name was not in the bill of particulars.

Mr. *Exham* :—" Mr. Skelly's name is not in the particulars, but I propose to call Mr. Hanly, the agent for the Petitioners, to prove when this fact came to his knowledge."

Mr. Justice FITZGERALD :—" At present you have laid no foundation for giving in evidence any statements made by Father Skelly. I will give you the greatest latitude I can. Do you say that these statements were followed by acts ?"

Mr. *Exham* said that they were, and he then applied for leave to insert in the particulars Father Skelly's name as guilty of intimidation.

Mr. Justice FITZGERALD said that some foundation must be laid for the insertion of that name before he could accede to the application.

* As the election was declared void on other grounds, it became unnecessary to decide this point.

In order to lay that foundation, the Petitioners' agent, Mr. Hanly, was called as a witness, and stated that it was not until the Saturday previous (that being Monday) that he had heard that Mr. Murtagh could give any evidence as to any interview between himself and Father Skelly. He admitted, however, in cross-examination, that he did not go down to Longford at all himself to prepare instructions for the Petitioners: neither had he any agent down there, and that the bill of particulars furnished was made up from loose information obtained from third parties without any due inquiry.*

Mr. Justice FITZGERALD, in this particular instance, allowed the particulars to be amended by the insertion of Father Skelly's name, and in his judgment, he said further as to this:—

"Undue clerical influence is so great an evil that I did not hesitate for a moment, when it was stated that the case was of that character, to permit the amendment of the particulars, with a view to bring that case before the Court, and I offered at any subsequent stage freely to amend the bill of particulars with a view to give an opportunity of proving any other case of that character."

Upon a witness, Mrs. Elizabeth Lee, whose name was not in the list, being called to show that she had been bribed,

When amendment not allowed.

Mr. Justice FITZGERALD stated that, inasmuch as it had appeared from the evidence of the Petitioners' agent that there had not been sufficient inquiry into the matters which it was intended to bring forward, he would be very slow to allow the amendment except on very strong evidence.

74.

Mrs. Lee's case was then withdrawn.

On a subsequent occasion, upon a witness, whose name was not in the particulars, being examined as to having been treated, Mr. Justice FITZGERALD (upon an objection being taken), said:—"I would not hesitate in a case, for instance, of bribery and undue influence, to give the utmost latitude to the Petitioners, even though the name be not in the bill of particulars, as I did

104.

* See observation by Fitzgerald, J., p. 104, of Minutes of Evidence.

yesterday in the case of Mr. Skelly,* but as to this case of individual treating, which may be quite capable of explanation, and which ought to have been inquired into beforehand, I do not think I ought to depart from the ordinary practice. Though I am here to represent the public, there are individual interests concerned, and even the public may be injured by inquiry into a matter as to which there is no opportunity of giving an explanation."

126. But when evidence as to one Father John Duffy was objected to on the ground that his name was not in the particulars,

Upon Mr. Butt stating that he was charged with employing mobs, Mr. Justice FITZGERALD allowed his name to be added to the list.

128. Mr. Butt again asked leave to amend the particulars by adding the name of five witnesses to prove treating. In support of this application, he cited a decision of Keogh, J., in the *Dublin Case*,† and Willes, J., in the *Coventry Case*.‡

Serjeant Armstrong contended that after what had been elicited in cross-examination from the Petitioners' agent,§ it would be giving a premium to inactivity and inattention in getting up a petition, if this application was granted. He hoped that at any rate before the application was acceded to, a strong application would be required. This was done by Martin, B., in the *Cheltenham Case*,|| and Willes, J., in the *Bodmin Case*.¶

Mr. Justice FITZGERALD said he should require an affidavit stating how the conducting agent obtained the information.

An affidavit was then made by the Petitioners' agent as to the five witnesses.**

* Vide ante, p. 8.

† Vol. i. 271.

‡ Vol. i. 105.

§ Ante, p. 9.

|| Vol. i. 63.

¶ Vol. i. 119.

** The affidavit was as follows:—

"(1). That I have been informed, and believe, that John Cosgrave, of Longford, kept an open house in Greville-Nugent's interest during the late election, and that drinking went on there to a large extent; and I say that I was not aware of this, nor had it been suggested to me, at the time of furnishing the bill of particulars.

"(2). That I have been informed, and believe, that Patrick Farrell, of Longford, on the day of the nomination, and previously, and also on the day of

Justice FITZGERALD said he would allow the particulars to stand as to No. 2 and No. 5 of the affidavit, there being nothing substantial in them.

What questions Petitioners' agent is not privileged from answering.

On the agent of Petitioners, Mr. Hanly, being called as a witness for the Petitioners, he was asked in cross-examination by Jean Armstrong, for the Respondents—

13.

“From whom did you obtain information as to intimidation?”

Butt, for the Petitioners, objected to the question, and stated that Mr. Hanly was not obliged to disclose the nature of the information he had obtained while preparing his case, or from whom he got it.

Justice FITZGERALD :—“You cannot be entitled as an agent to withhold the names of those who gave you information, but you may protect yourself by not disclosing any private information given you by your client.”

Butt submitted that that would also apply to any information given to him confidentially.

Justice FITZGERALD :—“If the parties came in and volunteered to give information, I do not think that it does apply.”

On a witness being asked about an occurrence that took place upon the polling day, but after the close of the poll,

What evidence is admissible if the occurrence is proved?

“I distributed large quantities of drink, both to electors and non-electors; and that I have heard he has made a claim against Greville-Nugent of £200 in connection with the election; and I say that I have heard this from him in the last twenty-four hours.”

“That I have been informed that John Feeney, of this town, supplied electors with drink previous to and during the elections, to voters and non-voters, in Greville-Nugent's interest, for which he has made a claim; and I say that I was not aware of this fact until yesterday.”

“That I have been informed, and believe, that John M'Dermot, of this town, also kept an open house in Greville-Nugent's favour, and supplied drink to electors and non-electors.”

“That Patrick Kernan, as I am informed, kept an open house in Greville-Nugent's interest, and has made a claim in foot thereof, in part payment of which he has received £20 from the Rev. James Reynolds; and I say that I did not receive the above information as to John M'Dermot and Patrick Kernan until this day.”

after close of
the poll.
33.

Mr. *Butt* objected to anything being gone into which took place after the election was over.

Mr. Justice FITZGERALD stated that he would admit anything that occurred on the day of the polling as indicative of what took place during the day.

63.

But afterwards, upon a witness being asked as to something that was said by an agent of the Respondent, twenty-six days after the election,

Mr. Justice FITZGERALD stated that he could not receive evidence of statements made twenty-six days after the election without some evidence, in the first place, to show that the authority of the agent continued after the election was over.

Order for
attendance of
witness when
granted.
198.

In the course of the Respondent's case,

Mr. Serjeant *Armstrong* stated that he should require the attendance of one Murtagh, a witness who had been previously called by the Petitioners.

Mr. Justice FITZGERALD:—"You had better write a letter to Murtagh, and he must be brought back at the Respondent's expense."

216.

On the following day Mr. Murtagh was called, but did not appear.

Mr. Serjeant *Armstrong* therefore asked for an order for his attendance.

The order was granted.

Intimidation
by introduction
of bodies of
men from
other places,
and organisa-
tion of defen-
sive force by
the other side.

It was proved that the party who supported Mr. Martin, the unsuccessful candidate, introduced at the election, from several neighbouring counties, for the purpose of intimidation, riot, and disorder, bands of men who had no business there, and who comprised within their ranks the worst characters that could be found in those counties. In consequence of this the Respondent's party organised a defensive force, consisting of great numbers of non-electors, but principally members of the families of the electors. It was proved that this course was taken for the purpose of protecting the outlying voters (many of whom had to come many miles to the poll) from the foreign bodies who had

men introduced in the county, because no sufficient escort of military or police could be obtained; nevertheless that it was intended by this petition that this course was illegal, and was evidence of such intimidation as ought to avoid the election.

Mr. Justice FITZGERALD, in his judgment, said as to this introduction of men from other counties :—

“If Mr. Martin had been returned, and evidence had been laid before me on a petition against him for intimidation by means of those men who were thus brought into the county, I could not for the moment hesitate to consider the election as utterly void. Further, I have to tell those parties, whoever they were, who brought them in here (no matter what their position), with a view to intimidation, riot, and disorder, that they become personally and criminally responsible for the unlawful acts which these their instruments committed.”

As to the course taken by the Respondent's party, he said :—

“I am to ask myself the question whether it was legal—that is, whether the enrolment of what I may call a voluntary police was necessary, and if necessary, whether it was legal? It would not have been necessary if a suitable escort of police or military could have been procured. As that could not be done, the necessity for some protection after the introduction of these foreign bodies was obvious; and there being that necessity, I cannot say that the enrolment of a voluntary police for defensive purposes only was an illegal step; but I must add that, although not illegal, it was highly dangerous: it was one rarely to be adopted, except under extreme circumstances, particularly as the parties who adopted it exposed themselves to great peril, and would have had to bear all the consequences which resulted. As I read the evidence, the purpose of the enrolment was not to create intimidation, not to intimidate others, but to prevent those who would otherwise vote for the Respondent from being intimidated. I cannot, therefore, come to the conclusion that there was intimidation on the Respondent's side.”

In support of the charge of spiritual intimidation, it was proved that immediately upon a vacancy occurring in the representation

Convention of a meeting exclusively of clergy, how far evidence of spiritual intimidation.

of Longford, a meeting of the Roman Catholic clergy of the county was convened. The meeting consisted exclusively of clergy, and at that meeting the Respondent was accepted as a candidate.

Mr. Justice FITZGERALD, in his judgment, said as to this meeting :—

“I allude to this meeting because it has been made the subject of much commentary, and upon the face of the petition, as well as in the evidence given for the Petitioners, it has been made the foundation of many of the charges which have been put forward. It is not my duty to pronounce upon the policy or expediency of that step so taken by the clergy—that is, the holding in the first instance a meeting confined to the clergy of the county, and their selecting a candidate whose interest they agreed to promote with all their power. All I have to do is to pronounce upon the legality of it, and I am obliged to say that, however objectionable it may have been, it was a lawful proceeding. It was quite as open to the clergy, as electors of the county, as it would have been to any other body of electors in the county, to separate themselves from the general mass of electors, select a candidate, and agree to support that candidate. When we recollect the very great interest which the clergy had in the then pending election, and the crisis which they no doubt considered was imminent, probably it is a course which one would have expected they would take upon the occasion. The objections to it are that it separates the clergy from the laity, it exposes the former to the imputation of what is called ‘clerical dictation.’ It creates jealousy and uneasiness, and lays the foundation for the charge of undue influence ; and there is this quite certain that it calls upon the judge who may have to determine the validity of the election to view with suspicion, and criticise with vigilance, the course which the clergy may take in the contest.”

Payments to voters for conveying other voters to the poll, how far allowable.

It was proved that there was considerable difficulty in providing conveyances for voters living at a distance to go to the poll, and that certain voters who owned cars were induced to lend them for the conveyance of other voters, and were paid for so doing. It was contended by the Petitioners that these payments to voters were

mere colourable payments, either as a reward to them for voting or to induce them to vote.

Mr. Justice FITZGERALD, in his judgment, after stating that he had come to the conclusion that this was not a colourable proceeding, made the following remarks upon it :—

“ I think it was a step of a very dangerous character; it brought the parties to the very verge of the law, and it would have required very little, if payments were actually made, to come to the conclusion that they were made to influence the vote, and so to void the election on the ground of bribery.”

It was proved that a considerable sum of money was paid over to an agent of the Respondent for the express purpose of expending it in supplying drink gratuitously. It was professedly given only to non-voters, but those non-voters were, for the most part, the sons, brothers, and relations of electors, and in many instances it appeared that the electors themselves participated in the drink distributed. In fact (as was stated by one of the publicans, of whom drink was ordered, when asked who got it), “ Anybody might have had the drink without any distinction.”

Systematic
distribution of
drink, where
corrupt
treating.

Mr. Justice FITZGERALD, in his judgment, said as to this :—

“ The parties concerned fell into the mistake of supposing that treating to be illegal must be the treating of voters. The treating of non-electors may be illegal and corrupt just as much as the treating of voters.”

Having stated his concurrence with Mr. Justice Blackburn's remarks in the *Bewdley Case** as to the bearing of the extent and amount of treating as a whole upon the interpretation of the intention of individual acts of treating, he said :—“ I am bound to regard this case as a whole, not to criticise each particular instance of treating, but to consider the whole course pursued from the 7th of December up to and including the day of election; and I am coerced to come to the conclusion that this general systematic treating of non-electors, consisting, as they did, largely of the families of the electors, was corrupt within the meaning of the statute, because it was carried out systematically with the view

* Vol. i. p. 19 ; see also Vol. i. p. 58, 59.

and intent of keeping up popular excitement, influencing public and individual opinion, promoting the popularity of the candidate, and generally to procure his election."

Mr. Justice FITZGERALD, in his judgment, declared the election void on the ground of corrupt treating.

As to undue influence on the part of the clergy, he said :—

Clerical undue
influence dis-
cussed.

"The utmost care has been taken by the legislature for the purpose of defining what undue influence is, and of repressing it. By the 5th section of the Corrupt Practices Prevention Act, 1854, it is defined with a view to embrace almost every case of improper influence, whether by physical intimidation or otherwise; and if we were now applying to the legislature to amend the law so as to include any case that might have been omitted, it would be difficult to invent language more comprehensive."

And subsequently—

"In considering what I call here undue clerical influence, it is not my intention in any way to detract from the proper influence which a clergyman has, or by a single word to lessen its legitimate exercise. We cannot forget its wholesome operation, and how often, even recently, it has been the great bulwark of the community against insurrection and fruitless attempts at revolution. The Catholic priest has, and he ought to have, great influence. His position, his sacred character, his superior education, and the identity of his interests with his flock ensure it to him; and that influence receives tenfold force from the conviction of his people that it is generally exercised for their benefit. In the proper exercise of that influence on electors, the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may, if he think fit, throw the whole weight of his character into the scale; but he may not appeal to the fears, or terrors, or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not, for instance, threaten to excommunicate, or to withhold the sacraments, or to expose the party to any other religious disability, or denounce the voting for any particular candidate as a sin, or as an offence

giving punishment here or hereafter. If he does so with a view to influence a voter, or to affect an election, the law considers him guilty of undue influence. As priestly influence is so great, we must regard its exercise with extreme jealousy, and seek by the utmost vigilance to keep it within due and proper bounds." As to the effect of undue influence upon an election, he said:—

Though a person (who is an agent) may be guilty of undue influence, the election is not to be set aside because of an act of undue influence, unless it is one that was calculated to affect, and in fact did affect, the election."*

Undue influence, effect on election to be considered.

As to costs, he said:—

Generally speaking, my view is, and it is the view of most of the Judges, that in inquiries of this kind, costs follow the result, and in this case I do not propose to take that course. I have read the petition, supplemented by an extensive bill of particulars, and in many of its allegations it is proved to be unfounded. As to bribery, it is unfounded. A case was made in the petition and in the particulars against the candidate and his principal supporters of personal bribery. As to intimidation, it is unfounded; and I cannot shut my eyes to this, the corrupt treating, in respect of which I have been coerced to disseat the Member and declare the election void, has been essentially the result of the illegal course pursued by the Management Committee. Upon these grounds I depart from the ordinary rule.

I refuse the costs of the petition, and I declare that the parties shall abide their own costs."

But see Mr. Justice Willes' remarks, as to intimidation, in *Northallerton* vol. i. 173.

CASE III.
BOROUGH OF MALLOW.

BEFORE RT. HON. MR. JUSTICE MORRIS, APRIL 7, 1870.

Petitioner : Major Knox.

Respondent : Mr. Munster.

Counsel for Petitioners : Mr. Butt, Q.C. ; Mr. Palles, Q.C. ; Mr. Kaye.

Agents : Messrs. Molloy and Watson.

Counsel for Respondent : Mr. Serjeant Armstrong ; Mr. MacDonough, Q.C. ;
Mr. O'Rearden.

Agent : Mr. Moriarty.

THE petition contained the usual allegations of bribery, &c., and prayed the seat for the Petitioner.

It appeared that there were forty-seven publicans who had voted for the borough. About a fortnight before the nomination one Captain Stewart, the expense agent for the Respondent, gave orders to twenty-two of these publicans to distribute gratis a considerable quantity of porter, tea, sugar, and bread. All these publicans voted for the Respondent, although several of them had previously signed a requisition to Major Knox, the unsuccessful candidate, to come forward. As to the charge of bribery, it was proved that several voters were ready and anxious to sell their votes, but it was not proved that any money was actually given to them.

The recriminatory case broke down, but upon the scrutiny the

Petitioners failed to strike off a sufficient number of votes to seat the Petitioner, Major Knox.

In the course of the case,

It appeared that large rewards—in one instance as much as £200—were offered by the Petitioners to induce persons to come forward and give evidence as to bribery.

Offer of rewards
for evidence,
legality of.
37.

Mr. Justice MORRIS, in his judgment, said as to this:—

“It is stated, and I believe the fact to be so, that it is not illegal to offer rewards for evidence, and decisions of at least one eminent judge have been referred to in support of this proposition; but of this I am clear, that at all events it should have been limited much more in amount, and that the extravagant proposition of £200 offered in a small town like this certainly was, to say the least of it, extremely dangerous.”

In the course of the scrutiny,

The name of one Thomas Barry (who was one of the old 40s. freeholders, and held a tenement at a rent of £1 a-year, Irish currency) appeared upon the register. He had been in receipt of parish relief for at least three years before the last revision of the lists, but notwithstanding this, his name had been allowed to remain upon the register; he continued to receive parish relief up to the time of the election; and in fact he came out of the workhouse in the workhouse dress only a few days before the election, for the purpose of voting, and he did vote for the Respondent.

Receipt of
parochial
relief after
registration.
18.

It was argued for the Respondent that his vote was good. No doubt by 13 & 14 Vict. c. 69, s. 111, his name, if objected to before the reviser, would have been struck off the register on account of the receipt of parochial relief, but as it had not been objected to, it was contended that any further parochial relief (given, that is to say, after the revision and before the election), ought not to render the vote invalid.

Mr. Justice MORRIS, in his judgment, said as to this:—

“This vote depends, I apprehend, entirely upon a question of law, and, as I have already announced, if it became the turning point of the case, I would, at the desire of either party, reserve it for the Court of Common Pleas. I shall now, however, state my

opinion so far as I have formed one. I am of opinion that the vote is invalid. By 13 & 14 Vict. c. 69, s. 104, the register is made conclusive, unless the committee (now the judge) shall consider that any vote is invalid, 'on the ground of any other legal incapacity at the time of his voting, which may have arisen subsequently to the expiration of the time allowed for making out the list of voters from which the register of voters in force at the time of such election shall have been formed.' The receipt of union relief is at common law a disqualification to vote, and by common sense it ought to be so in the case where the franchise is a property one. By s. 111 of the same Act, the receipt of Union relief is made a disqualification to be placed upon the register. If, however, a person receiving pauper relief does get upon the register, I am clearly of opinion that, if no subsequent relief is proved, the register would be conclusive, under s. 104. I cannot, however, accede to the argument that because a statutable disqualification to be put upon the register existed at the time of the revision, it can cure a legal incapacity to vote, which arose by the receipt of additional parochial relief after the time of making up the register."

Vote of paid agent of candidate who has retired before the poll invalid.

22.

It appeared that one Edward O'Connor was the paid conducting agent of a Mr. Waters, who had declared himself a candidate, but, previously to the nomination, although subsequently to the issue of the writ, had retired from the contest. O'Connor voted for the Respondent.

Mr. Justice MORRIS, in his judgment, said as to the vote of O'Connor:—

"By 31 & 32 Vict. c. 49, s. 8, 'No elector who, within six months before any election shall have been retained, hired, or employed for all or any of the purposes of the election for reward, by or on behalf of any candidate at such election, as agent, canvasser, clerk, messenger . . . shall be entitled to vote at such election.' A good deal turns upon the definition to be given to the word 'candidate.' That word is defined by 21 & 22 Vict. c. 89, s. 3, and also by Parliamentary Elections Act, 1868, s. 3, and it was decided in the Youghal case* that the words 'candidate at any election'

* Vol. i. 292, S.C., Irish Common Law Reports, vol. iii., p. 530.

have the same meaning in this last mentioned Act as in that first mentioned. I should, therefore, be of opinion (if it became of consequence to rule it,) that they have also the same meaning in 31 & 32 Vict. c. 49, s. 8, and that accordingly the vote of O'Connor is invalid, but, if necessary, I would reserve the point for the Court of Common Pleas."

It appeared that the above mentioned * Edward Connor was in partnership, as a solicitor, with his son Antony. Antony O'Connor had voted for the Respondent. He was never personally retained as a paid agent for Mr. Waters, but it was contended that as he was a partner with his father he would, as such partner, be entitled to some share of the money paid to his father by Mr. Waters for acting as his agent, and that this would be a constructive payment to Antony O'Connor by Mr. Waters, which would invalidate the vote of Antony as well as that of his father, under 31 & 32 Vict. c. 49, s. 8.

Partner of
paid agent how
affected by
31 & 32 Vict.
c. 49, s. 8.
28.

Mr. Justice MORRIS, in his judgment, said, as to the vote of Antony O'Connor:—

"If two attorneys are partners together, and one of them is employed personally as a paid agent, possibly without the knowledge of the other, surely it cannot be held that if that other votes, he is to be constructively held liable for having committed a misdemeanour. I should therefore be of opinion (if it were necessary to decide it) that the vote of Antony O'Connor is valid, but this point also, if it became necessary, I should be willing to reserve for the Court of Common Pleas."

It was proved that four persons, who eventually voted for the Respondent, had before voting offered to sell their votes to either of the candidates. It was not, however, proved that they had been successful in actually getting a bribe from any one. Eventually they all voted for the Respondent. It was contended by the petitioner that their votes ought to be struck off on the ground that what they had done amounted to bribery, at any rate at

Offer to sell
vote not
bribery.
49.

* Ante, p. 20.

common law, if not within the meaning of the Corrupt Practices Prevention Act, 1854.

Mr. Justice MORRIS declined to strike off the vote, and in his judgment, said as follows:—

“It has been urged that I should strike off the votes of these four persons who tendered their votes for sale. It is clear that the vote of every briber should be struck off, and also that of every bribee, no matter by whom bribed, but while the offer to purchase a vote is made bribery by the second section of the Act of 1854, the offering for sale by the voter of his vote does not appear to be so by section 3 of that Act, unless the offer is followed up by an agreement to that effect. It has been urged, however, that it was a disqualification at common law. However, no case has been referred to in which such a class of voters was ever struck off, and I decline to make a precedent here.”

Mr. Justice MORRIS, in his judgment, declared the election void on the ground of corrupt treating. As to the principles on which he had acted in coming to a decision, he said:—

Evidence, how
to be weighed;
evidence of
offers not fol-
lowed by acts.
33.

“I have desired to apply two rules to work out my judgment by; they are shortly these—First, that I should be sure, very sure, before I come to a decision adverse to any party, where his character or credit is involved; secondly, that offers or conversations unaccompanied by any acts should be much more strongly proved in evidence than where some clear definite act has followed the alleged offer or conversation.”

As to what constitutes corrupt treating, he cited the following passage from the judgment of Blackburn, J., in the *Wallingford Case*: *—

Corrupt
treating
defined.
71.

“I think that whenever the intention is by such means to gain popularity, and thereby to affect the election, or even if the case is, as very often perhaps it is, that persons are afraid that if they do not provide entertainment and drink to secure the strong interests of the publicans and the persons who take drink whenever they get it for nothing—who are always a numerous body—they will become unpopular, and therefore, provided it is

* Vol. i. p. 59.

done in order to affect the election, where there is an intention in the mind of the candidate or the agent to produce that effect, it is corrupt treating, and the seat ought to be vacated."

As to costs, he said :—

"I see no reason to depart from the general rule applicable to Costs. cases of this sort that the costs should follow the event."

CASE IV.
BOROUGH OF WATERFORD.

BEFORE RT. HON. MR. BARON HUGHES, APRIL 21, 1870.

Petitioners : Messrs. Condon and O'Shea.

Respondent : Mr. R. Bernal Osborne.

Counsel for Petitioners : Mr. Ryan, Q.C. ; Mr. Monahan.

Agent : Mr. Coll.

Counsel for Respondent : Mr. Sergeant Armstrong, ; Mr. Hackett.

Agent : Mr. Edmund Power.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

The charges of undue influence by landlords, by employers, and by persons in authority, of spiritual intimidation and of treating were all abandoned, and the Petitioners at the end of the case relied only on the charges of colourable payments and corrupt offers said to have been made by agents of the Respondent, but the evidence in support of these charges was held unworthy of belief.

In the course of the case,

Particulars :
amendment of.
(1) 194.

Upon the name of one Sherlock being mentioned, it was objected that his name was not in the particulars.

Mr. *Monahan* :—" We will ask to be allowed to add his name, if necessary."

Serjeant *Armstrong* :—" The practice is, for the attorney to be sworn before a name can be added."

Mr. Baron HUGHES :—" It cannot be done as a matter of course, but, on the other hand, I will not shut out any evidence that could be given, unless I see clearly that it would be taking some unfair advantage of the opposite party. What we did on the last trial here was this : when a name was mentioned as an important name, which was not in the particulars, notice was required to be served for the next morning to amend in respect of that particular name, and then inquiry was made, on the oath of the attorney as to when he heard the name first."

Evidence was tendered to shew that one Dr. Scott had offered to vacate his seat in the Town Council in favour of one Clampett, if Clampett would vote for the Respondent.

Offer of seat in town council a bribe under Corrupt Practices Act 1854, s. 2 (2).
72.

It was contended on behalf of the Respondent, that the office of town councillor was not an office within the meaning of the Corrupt Practices Prevention Act 1854, s. 2 (2).

Mr. Baron HUGHES, in his judgment, said as to this :—" On the law of the case it appears to me, as at present advised, that the office of town councillor is an office within the terms and the spirit of the Act. I think it is just such an office as could be abused in the way contemplated by the Act. It is an office of honour and dignity, and the natural and fair object of the reasonable ambition of many electors. If I had a doubt on the subject, and it became necessary to decide it, I would reserve it for the Court of Common Pleas ; but I have no doubt."

72.

In the report of the judge as to the previous election, dated February 2, 1870, one Clampett was reported as having been guilty of corrupt practices.

Effect of report of judge under Parl. El. Act 1868, s. 45.

Mr. Baron HUGHES, in his judgment, said as to this :—" What is the effect of the report of Clampett for corrupt practices ? It is a judgment of guilt against him for a misdemeanour, just as if he had been tried at the Assizes and found guilty of larceny ; it is a civil disqualification of him for any office or public employment, and it even deprives him of his franchise as an elector." *

43.

* But see Bewdley Case, vol. i. 176, where Blackburn, J., held the reverse of this. See also Report from the Select Committee on Corrupt Practices, ordered by House of Commons to be printed, June 23, 1870.

At the close of the Respondent's case,

Evidence may
be tendered up
to the latest
moment of the
hearing.
(2) 355.

Mr. Baron HUGHES said as follows :—" If any document is required to be produced on either side, or if either side ask that a witness should be examined in order to throw further light upon these matters, I shall be quite ready to receive the evidence up to the last moment I leave the town. We only close the evidence now in form ; but up to the last moment I shall be ready to hear anything ; I will shut out nothing."

Mr. Baron HUGHES, in his judgment, declared the Respondent duly elected.

As to the principles upon which evidence should be tested, he said :—

How truth of
evidence
should be
tested.
12.

" I fully admit and thoroughly adopt the propositions stated by Mr. Monahan in his reply, viz., that this Court ought not to expect the disclosure of corrupt transactions by pure and untainted witnesses ; and further, that this Court is not to discredit one corrupt witness simply because he is contradicted by another corrupt witness. The Judge must look to the probabilities of the case, and must decide which is most likely to be telling the truth, having regard to the known character, the present and future interests of the witnesses, and the manner in which they give their evidence in Court."

As to costs he said :—

Costs.

" Costs follow the event."

CASE V.
BOROUGH OF BRISTOL.

BEFORE MR. BARON BRAMWELL, MAY 23, 1870.

Petitioners: Messrs. Brett and others.

Respondent: Mr. E. S. Robinson.

Counsel for Petitioners: Mr. O'Malley, Q.C. ; Mr. Serjeant Sleigh ; Mr. Woodforde Ffookes.

Agent: Mr. P. Gilbert.

Counsel for Respondent: Mr. Serjeant Ballantine ; Mr. J. O. Griffiths ; Hon. E. Chandos Leigh.

Agents: Messrs. Gwyn and Westhorpe.

THE petition contained the usual allegations of bribery, &c., and also an allegation of bribery at a preliminary test ballot.

The evidence adduced in support of the charge of bribery and treating was insufficient to establish a case, but it was proved that corrupt treating had taken place at the test ballot ; and upon the point being reserved for the Court of Common Pleas to say whether such treating ought to invalidate the election, the Court decided that it ought, and the election was consequently held void.

Before the commencement of the case,

Mr. Serjeant *Ballantine*, for the Respondent, complained that the order for particulars had been most insufficiently complied with, and, unless sufficient information was given by Petitioner's counsel in his opening, so as to enable him to meet the charges

Application at the trial for further particulars not granted, but adjournment

if necessary,
promised.
(2) 1.

raised against the Respondent, he asked for an adjournment in order to enable inquiries to be made. He further asked that all evidence might be excluded, except such evidence as might be applicable to particulars properly given.

Mr. *O'Malley*, in opening the case for the Petitioners, gave no names of either bribers or bribees.

Mr. Serjeant *Ballantine* therefore repeated his complaint as to the insufficiency of the particulars delivered, and asked his Lordship, before hearing any evidence, to order particulars to be given forthwith of those cases of bribery and treating which the Petitioners were about to prove.

Mr. *O'Malley* protested against any further order for particulars being made.

Mr. Baron BRAMWELL said he did not think he could now make any further order, inasmuch as a list of bribees had already been furnished. Whether, if the application had been made *de novo*, he should have ordered a more specific list, was another matter. However, if any detriment should be done to the Respondent by more particular particulars not having been supplied in the first instance, a remedy would have to be found for it in an adjournment, and in the imposition of costs upon the other side if the adjournment was necessitated by their omission to furnish full particulars.

In the course of the case,

Evidence how
far admissible,
if name not in
particulars.

It was objected that the name of a person alleged to have been bribed was not in the particulars delivered.

(2) 317.

Mr. Baron BRAMWELL :—"I do not like to shut out any evidence. It is not in accordance with the order, but I shall not disallow it, because as there is no jury, I should prefer to hear the evidence; and if I see any improper prejudice towards the Respondent, I shall know how to deal with it."

Afterwards he added as to this :—

(2) 339.

"If I come to the conclusion that the suppression of the name has been wilful, I shall know what value to put upon the rest of the evidence given as to this matter; and if I find that any injury has been sustained by the Respondent, I must endeavour to make amends to him in some way or other, by giving him every oppor-

ity of making inquiry into the case ; but, as at present advised, m resolved to admit the evidence."

Upon a case of bribery being gone into before the agency of the ber had been proved,

Mr. Baron BRAMWELL said :—" I certainly deprecate proofs of s done by a person whom there would be little hope of proving be an agent ; because, although the Judge, in his capacity as yman, might endeavour to weed it out of his mind, a small rtion of prejudice may remain ; and although the statute* says at you may, unless the Judge otherwise orders, prove bribery fore agency, it is desirable that the proof should not be given less there is a reasonable expectation of proving the agency erwards."

When bribery
may be
gone into
before agency
proved.
(3) 3.

Mr. Baron BRAMWELL, in his judgment, postponed granting his tificate, and reserved the question of costs until the Court of mmon Pleas† had decided the point reserved by him as to treat- g at the test ballot.

As to reserving a point of law under s. 12 of the Parliamentary ctions Act 1868, he said :—

'The 12th section says, ' If it shall appear to the Judge at the d of the petition that any question of law requires the further sideration of the Court of Common Pleas (and it does so ap- ar to me in this case), then it shall be lawful for the said Judge . . . to reserve any such question or questions in like manner questions are usually reserved by a Judge at Nisi Prius.' We know how that is done. The verdict is for the one party or the er, and then the party against whom the verdict is directed ves to set it aside and get a verdict for himself. Another way, hich questions are reserved, is to make a special case of them ; in substance there ought to be no difficulty ; and if the learned nsel will agree upon any way in which it should be done, I will it in that way, unless I see any reason against it."

Point of law
how to be
reserved.

Mr. O'Malley :—" The best way will be for your Lordship to be a special case upon which we could go to the Court."

* Parliamentary Elections Act 1868, s. 17.

† The Court decided the election to be void.

Mr. Serjeant *Ballantine* :—" Your Lordship will allow us to see you at Chambers before the case is finally settled, so that if any matter occurred to either of us we might make a suggestion."

Mr. Baron BRAMWELL :—" Yes." *

* The case as stated for the opinion of the Court of Common Pleas, together with a full report of the arguments of counsel and the judgment of the Court, is to be found in *Brett v. Robinson*, L. R. 5 C. P. 503.

CASE VI.

COUNTY OF TIPPERARY.

BEFORE MR. BARON HUGHES, MAY 27, 1870.

Petitioners: Messrs. Mackay and O'Connor.

Respondent: Mr. Heron, Q.C.

Counsel for Petitioners: Mr. Purcell, Q.C.; Mr. Porter.

Agent: Mr. John Joseph Hickie.

Counsel for Respondent: Mr. Serjeant Armstrong; Mr. Crean.

Agent: Mr. James Kilkelly.

THE petition alleged bribery, treating, undue influence, and interruption of telegrams, both by the Respondent himself, and by his agents. It contained also allegations with regard to the disqualification and personation of voters.

At the hearing all the charges were abandoned, except those of bribery and undue influence by agents, and the evidence as to these was held insufficient to establish a case.

Mr. Baron HUGHES, in his judgment, declared the Respondent duly elected.

As to the influence of Roman Catholic priests, he said :—

“A priest’s true influence ought to be like a landlord’s true influence, springing from the same sources, mutual respect and regard, sympathy for troubles or losses, sound advice, generous assistance, and kind remonstrance. And where these exist, a priest can exercise his just influence without denunciation, and the landlord can use his just influence without threat or violence. A

Clergy, legitimate influence of.

28.

priest is entitled, as well as any other subject, to have his political opinions, and to exercise his legitimate influence legitimately. It is a mistake to suppose that on a man taking holy orders he ceases to be a citizen, or ceases to be clothed with all the privileges and rights of a citizen. But a priest has no privilege to violate or abuse the law; he has no right to interfere with the rights and privileges of other subjects. He may exercise his own privileges, but he must forbear in respect of others. It is also a mistake to suppose that every act of a priest is a spiritual act; an assault by a priest is simply an assault, and not priestly intimidation; and the assault of a priest can and ought to be resented and prosecuted and punished like any other individual."

Costs followed the event.

CASE VII.

BOROUGH OF BRECON.

BEFORE MR. JUSTICE BYLES, SEPT. 14, 1870.

Petitioners: Messrs. Overton and Mainwaring.

Respondent: Mr. Gwyn Holford.

The Petitioners appeared in person.

Agents: Messrs. Wyatt and Hoskins.

Counsel for Respondent: Mr. Browne.

Agents: Messrs. Carlisle and Ordell.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

Before the hearing of the petition, an application for leave to withdraw had been made, but as it was not made in time, the case proceeded in the usual way. At the hearing no evidence was offered, and consequently the petition was dismissed, and the Respondent declared duly elected.

After the Court had been opened,

One of the Petitioners, Overton, stated that he had given instructions to withdraw the petition, and he understood that it had been withdrawn, and that he was not now prepared to offer any evidence.

Procedure in case of irregular application to withdraw petition.

(1) 2.

In corroboration of his statement he tendered affidavits which he and the other Petitioner and their Parliamentary Agent had

made on the previous day in the usual form under the Act* as to the reasons for the withdrawal of the petition.

Mr. Justice BYLES :—“ I should prefer that the evidence given here should be given *viva voce*, and subject to cross-examination. Therefore I think it better, if you do not object, that you and the other Petitioner should be sworn. Then your affidavit will be read as part of the case, and the adverse counsel may ask you any questions he thinks fit.”

Messrs. Overton and Mainwaring were then sworn, and their affidavits read.

(1) 30.

Mr. Justice BYLES :—“ There must be five clear days after notice for any one to come in that thinks fit, the Petitioner being a trustee for the whole body of voters for the borough and for the public generally, and he cannot withdraw unless he complies with the provisions of the Statute,† which in this case, without any corrupt intention but by an oversight, he has omitted to do. I take this opportunity of saying in the first instance that I have not adopted the course of coming down here without having recourse to judges whose experience in election matters is much greater than mine, and their opinion coincided with mine that this arrangement cannot take place except in open Court, and subject to cross-examination.”

The petition was then declared dismissed.

Mr. Justice BYLES, in his judgment,‡ declared the Respondent duly elected. After stating that the petition had been already dismissed, he said that there still remained two questions to be disposed of, one with respect to costs, and the other as to the report he should make to the Speaker.

Costs.

(2) 3.

As to the question of costs, he said,

“ The usual rule is that costs should abide the event, and the precise question now is whether there be anything before the Court to induce it to engraft in this case an exception upon that general rule. Now, no doubt a suspicion might have arisen,

* Parl. El. Act, 1868, Rule XLV.

† Parl. El. Act, 1868, s. 35, and Rules XLV.—XLIX.

‡ This judgment was delivered on the morning after the petition had been heard and dismissed.

since by somebody, and *primâ facie* no doubt by the Petitioner, (whether or not with the connivance of the Respondent), a very irregular course has been taken with respect to the withdrawal of this petition. The Act* of Parliament is clear that when a man has once become a Petitioner he cannot withdraw from the petition until he has given several days' notice of withdrawal, so that another person may, if he thinks fit, come in and stand in his place. The Act says, 'An election petition shall not be withdrawn without the leave of the Court or a judge,' and an indispensable prerequisite then is to apply for the leave of the judge. But a Petitioner cannot even apply for the leave of a judge until he has given the regular notices prescribed by the Act. Now, in this case all these prerequisites have been neglected, and even the notice which *was* published states that which is not correct, for it states that 'the above Petitioners have on the 10th day of September, 1870, lodged at the Master's office notice of an application to withdraw the petition.' Now, as a fact, no such notice was lodged, but I do not think this mis-statement is anything more than a mistake. Upon the whole, after taking a great deal of time to deliberate upon the matter, I owe it to the parties to say that the suspicions which undoubtedly were raised in my mind by all these irregularities have been removed, and I have come to the conclusion that neither were the Petitioners induced by any corrupt motive to commit the irregularities which they undoubtedly did commit, nor that the Respondent had any corrupt intention; but it seems to have been a misreading of the Act of Parliament, a mistake or accident such as may possibly have arisen even in former cases. That being so, I see no sufficient reason why the costs should not abide the event as usual; I therefore order the Petitioners to pay the costs of this inquiry."

* Parl. El. Act, s. 35, and Rule XLIX.

CASE VIII.
BOROUGH OF SHREWSBURY.

BEFORE MR. BARON CHANNELL, DEC. 5, 1870.

Petitioners : Messrs. Buttress and others.

Respondent : Mr. Douglas Straight.

Counsel for Petitioners : Mr. Serjeant Ballantine ; Hon. E. Chandos Leigh.

Agents : Messrs. Wyatt and Hoskins.

Counsel for Respondent :

Mr. H. Giffard, Q.C. ; Mr. Poland ; Mr. Montague Williams.

Agent : Mr. F. C. Greenfield.

THE petition contained the usual allegations of bribery, undue influence, and intimidation, but did not pray the seat.

The evidence that was given in support of the petition failed to establish a case.

Mr. Baron CHANNELL, in his judgment, declared the Respondent duly elected.

On the question of what will constitute agency, he said :—

“I do not apprehend that agency is established by merely shewing that a particular person has gone about with a candidate and has canvassed. Canvassing will only afford premises from which a judge, discharging the functions of a jury, may conclude that agency is established. If a gentleman comes down to canvass a borough, and, as a kind of guarantee for his respectability, is introduced to the voters by persons of station and

How far canvassing constitutes agency.

sition in the borough, I am of opinion that such canvassing, though it would be properly called canvassing, would not be canvassing within the meaning of those words from which I am to infer the agency existed. I draw in my own mind the widest distinction between the kind of canvassing in the presence of the candidate and canvassing of such a character as to constitute an agency. There may be a central committee, and a gentleman may be chairman of that committee; placards may be issued in the course of the election, signed, not by the candidate himself, but by some person representing him—these are acts which go beyond the mere act of canvassing, if by that you mean that the returning member is attended on his first introduction by individuals who think he is a fit person to represent the constituency, and introduce him accordingly. I wish it to be understood how far, in my opinion, from mere canvassing those acts must be, from which you may infer that kind of agency which is to fix the candidate with responsibility for the act of the person acting on his behalf.”

As to avoiding an election on account of a single and insignificant act of bribery, he said :—

If an act of bribery is clearly made out, and agency is clearly proved, I am disposed to agree with the dictum of my brother LESTER,* even supposing it to be a little in opposition to that of my brother MARTIN,† and to think that a judge is not at liberty to weigh the importance of that act, or to take into consideration the effect it may have had upon the election, but he is bound to apply the express provisions of the Act of Parliament, without going into the question of the comparative insignificance of the act of bribery which has been proved to have been committed.”

Effect on election of single act of bribery.

23.

Costs followed the event.

Costs.

Blackburn case, vol. i. 202. See also Blackburn, J., in Hastings case, vol. i. 218.

Halford case, vol. i. 142.

CASE IX.
BOROUGH OF NORWICH.

BEFORE MR. JUSTICE KEATING, JAN. 4, 1871.

Petitioner: Mr. Stevens.

Respondent: Mr. Jacob Tillett.

Counsel for Petitioner: Mr. O'Malley, Q.C. ; Mr. J. O. Griffiths.

Agents: Messrs. White, Renards and Floyd.

Counsel for Respondent:

Mr. Rodwell, Q.C. ; Mr. Serjeant Ballantine ; Mr. Sims Reeve.

Agents: Messrs. Flux and Leadbitter.

THE petition contained the usual allegations of bribery, &c., an allegation that the Respondent personally engaged as an agent at his election in 1870 a person who had been scheduled as a briber under the Royal Commission which issued in 1869, and also, an allegation that the Respondent had been guilty of bribery and treating by himself and his agents at the election in 1868.*

* A rule was obtained in the Court of Common Pleas to show cause why this allegation should not be struck out, on the ground that the matters alleged might have been given in evidence in support of the recriminatory case in the previous petition, in which the present Respondent was Petitioner, and claimed the seat. See Norwich case, vol. i. 8. This rule, after an elaborate argument, was discharged, and the allegation accordingly retained. *Stevens v. Tillett*, L.R. 6, C.P. 147.

It was proved that at the previous election in 1868, the Respondent and the other Liberal candidate, Sir William Russell, coalesced; that one Ray, an agent of Sir W. Russell, bribed several voters to vote for both the Liberal candidates. In consequence of the coalition, the Respondent became liable for the acts of Sir W. Russell's agents, and his subsequent election in 1870 was accordingly held void.

Evidence was given to prove that the Respondent had personally employed as an agent a scheduled briber, contrary to the provisions of Parliamentary Election Act, 1868, s. 44, but it was not sufficient to establish a case. Evidence was also given to show that persons had been bribed to hold up their hands at the election; but this was not proved either.

In the course of the case,

It was proved that at the election in 1868, the Respondent and the other Liberal candidate, Sir W. Russell, coalesced, that after this coalition, Ray, an agent of Sir W. Russell, instructed Lacy to bribe several voters to vote for the two Liberal candidates, which he accordingly did.

Liability of candidates after coalition for the acts of each other's agents.

Mr. Justice KEATING said as to this in his judgment,—“The position in which the Respondent was placed in relation to Ray and the other agents of Sir W. Russell by the coalition so well expressed by my brother Blackburn in the North Norfolk case,* that I would prefer reading his words to using my own.” 53.

Having read the passage, he continued as follows:—“It was suggested by Mr. Rodwell for the Respondent, that if it should appear that Ray did not bribe for the Respondent, but exclusively in the interest of Sir W. Russell and against the interest of the Respondent, then in giving a bribe he could not be considered as the agent of the Respondent; in other words, the joint agency would then, *ipso facto*, terminate. I think it were clearly established that Ray had gone to a voter and, in order to exclude the Respondent, had said,—‘I give you this money to vote for Sir W. Russell, but not to vote for Tillett, because my object is that you should not vote for Tillett,’—it

* Vol. i., 240.

might be successfully argued that he was thereby determining the joint agency, and no longer acting in the bribery as the Respondent's agent. But that has not been proved."

Employment of
a scheduled
briber as
agent.
Parl. El. Act,
1868, s. 44.

18.

In support of the charge of employing as an agent a scheduled briber, it was proved that one Ray was scheduled as a briber by the Royal Commissioners appointed in 1869 to inquire into corrupt practices in the borough. The Respondent became a candidate for the borough in June, 1870, and on June 16 he wrote to his agent prohibiting the employment of Ray as an agent. It appears that about that time there were proceedings in Parliament for the purpose of disfranchising the persons scheduled by the Royal Commissioners, and an Act of Parliament, 33 & 34 Vict. c. 25, for that purpose received the Royal Assent on July 4, 1870; but by s. 2 of that Act, an exception is made in favour of Ray and another person until they shall have been adjudged guilty of bribery by a competent tribunal. Shortly after June 16 it became known to the Respondent that Ray was to be thus exempted from the operation of the Act, and on June 25 the Respondent wrote an article in a local paper, of which he was himself the editor, headed, "Tardy Justice to Mr. Ray," which, after alluding to the fact of his exemption under this Act, concluded thus:—"We congratulate Mr. Ray upon the fresh opportunities now accorded to him to serve his party with all his former zeal, and without either risk or reproach." Thereupon Ray commenced active exertions with reference to the election, and though he did not actually canvass, yet he publicly and ostentatiously exerted himself in favour of the Respondent. The Respondent, however, when called as a witness, stated that he had not in any way authorised Ray to make these exertions on his behalf, that he had no knowledge whatever that they were being made, and that he never intended to recognize him in any way as his agent.

Mr. Justice KEATING in his judgment said as to this,—“The 44th section of the Act requires, in order to avoid an election, that the candidate should be proved to have personally engaged the party as canvasser or agent, and I quite agree with the construction which was put upon that section by Mr. Justice

Blackburn in the North Norfolk case.* I quite agree that though it is not required that the candidate should have personally engaged the scheduled man in the sense there referred to, yet he must be proved to have been personally cognizant of, and to have sanctioned his appointment or his acting as his agent, in order to bring him within this section. Undoubtedly in this case there is strong evidence to show that the Respondent, if he had knowledge of the acts of Ray, sanctioned those acts. It appears that Ray's proceedings were public and ostentatious; he published a placard in which he referred persons who were engaged in registration matters to the Respondent's committee-room. I do not find it proved that there was any public repudiation of that on the part of the Respondent, therefore there no doubt are circumstances in this case to bring the Respondent within the construction of the rule which I have mentioned, were it not that the Respondent himself was called, and swore that he had no knowledge whatever of the efforts made by Ray on his behalf, and that he never intended to recognize him as his agent."

Mr. Justice KEATING in his judgment declared the election void on the ground of bribery by agents.

As to an election being avoided by a single act of bribery, he said:—

"It seems hard at first sight that a single act of bribery should void an election; but when an act of bribery is committed the whole election of the party bribing is tainted. It is no longer an election; it is utterly void. On this point I would refer to the learned judgment of my brother Willes in the Blackburn case.† This result may be undoubtedly a cruel consequence of the law of agency as applicable to elections; it is, however, a result that arises from the necessity of the case, and is well put by the learned Scotch judge, Lord Barcaple, in the Greenock case,‡ an exposition which was approved by my brother Blackburn in the same case. §

Effect of a single act of bribery upon the election.
51.

* Vol. i., 238.

† Vol. i., 201, 202.

‡ Vol. i., 251.

§ In the North Norfolk case, vol. i., 240.

Effect of
bribing persons
to hold up their
hands at the
nomination.
35.

As to bribing men to hold up their hands at the nomination, he said :—

“If it were proved that a candidate or his agent hired men to attend the nomination, and to hold up their hands upon the occasion, my impression decidedly is that it would be illegal, and would avoid the election. If that had been proved before me, the point being a new one, I should have thought it my duty to reserve that question for the opinion of the Court of Common Pleas.”

Costs.
78.

As to costs he said :—

“Generally speaking no doubt the rule prevails that costs should follow the event, but in this case I am not at all satisfied with the particulars delivered; they are most unnecessarily voluminous * and calculated undoubtedly to increase expense. There are also circumstances connected with this case that, in my opinion, bring it very closely and clearly within the Stafford case.† In that case, my brother Blackburn was placed nearly in the position in which I am in now. He felt himself compelled to unseat Mr. Pochin, a gentleman who had gone down to a corrupt borough with the intention, if he possibly could, to cleanse it, but who in the attempt to accomplish that laudable object not only failed, but by an imprudent act of an agent, became liable for that act, but my brother Blackburn, while he felt himself under the necessity of unseating Mr. Pochin, looked to all the circumstances of the case; he looked to the feeling that was exhibited and to the purity which had governed the intentions of Mr. Pochin in that case. The present case bears so strong an analogy to that case, that I do not think that I could satisfactorily distinguish between them, so as to make any other order than that made by Mr. Justice Blackburn upon that occasion. I shall therefore direct that each party pay their own costs.

* See per Blackburn, J., in the Hereford case, vol. i., 196.

† Vol. i., 234.

CASE X.
BOROUGH OF BRECON.

BEFORE MR. JUSTICE LUSH, MAY 8, 1871.

Petitioners: Richard Watkins and J. Watkins.

Respondent: Mr. James Price Gwyn Holford.

Counsel for Petitioners: Mr. Serjeant Ballantine ; Hon. E. Chandos Leigh.

Agents: Messrs. Wyatt and Hoskins.

Counsel for Respondents: Mr. Giffard, Q.C. ; Mr. Montagu Williams.

Agents: Messrs. Carlyle and Ordell.

THE petition alleged that the Respondent was by himself and other persons on his behalf guilty of bribery, treating and undue influence *after* the said election, and for a sixth allegation 'that after the said election and return, and within 28 days before the presentation of this petition the Respondent by himself and by others, with his privity and on his account, corruptly gave and provided in pursuance of such corrupt practices meat, drink, entertainment, and provision on Friday, September 30, 1870, at Bickland, in the county of Brecon, to certain voters on account of such voters having voted for him."

It was proved that after the dismissal of a petition which had been presented against the return of the Respondent, an entertainment was given by the mother of the Respondent, but with his knowledge and concurrence, to a large number of persons, among whom were many who had voted for the Respondent at his election, and some of whom had voted against him. It was

ELECTION PETITIONS

and, however, proved that this entertainment had been mentioned at some thought of till after the election was over, neither was it proved that any such entertainment had ever been given before, or that it was intended thereby to influence the voters at a future election.

Mr. Justice LINDLEY, in his judgment, declared the Respondent guilty thereof, and said as follows:—

"The question which I have to determine is whether the entertainment given by Mrs. Gwyn Halford on September 30, immediately with the knowledge and concurrence of the sitting member to a large number of persons, amongst whom were many who had voted for the Respondent at the last election, and some of whom had voted against him, was such a treating as rendered the election void. This is, I believe, the first case which has arisen of a person indicted upon treating after an election. The *Liverpool case** cited in my brother Ballantine, turned upon s. 4 of the Act of 1854 and the facts brought it within the very words as well as the obvious intention of that Act, but the case does not touch the point now in question. Having, therefore, no authority to guide me, I have to ascertain for myself what is the limit of treating which the Legislature meant to prohibit by the latter part of s. 4 of 17 & 18 Vict. c. 102.

"It is clear, and indeed has been more than once decided,† that the word 'corruptly' governs the whole section, so that what the Act prohibits and makes so penal is, not treating simply and without regard to its character and object, but corrupt treating, that is, treating with a bad motive, treating with an object and purpose which the law denounces and desires to put down.

"In what, then, does corrupt treating given after the election consist? It is easy enough to state what would be corrupt treating before the election. Indeed the Act itself defines it; but what is that ingredient which must enter into the treating in order to make it corrupt with reference to an election which is over and past, when it can no longer influence the voting or have any effect upon the election?

* 1 P. R. & D. 370.

† Per Blackburn, J., vol. i. 19, 73, 242; and O'Brien, J., vol. i. 265.

What is corrupt treating after an election.

‘ I do not agree with my brother Ballantine that treating with view to attach the voters to the candidate and secure their future support is within this branch of the section. Treating for such a purpose may peril the future election which it is designed to influence, but we are now dealing with a past election, and the treating charged is therefore a proceeding which reflects back and points that bygone election. Nor can it be the merely giving an entertainment as an expression of gratitude, or by way of rewarding the voters. So to hold would be to give no meaning to the word ‘ corruptly,’ for the Act says that the offence shall consist, not in the mere giving meat, drink, &c., to a voter ‘ on account of his having voted,’ but the doing so corruptly on account of his having voted. And this agrees with the 5 & 6 Vict. c. 102, s. 22, which was repealed by the Corrupt Practices Act, 1854, the language of which was, not rewarding merely, but *corruptly* rewarding such person for having voted.

“ I am, therefore, driven to the conclusion that the treating which the Act calls corrupt as regards a bygone election must be connected with something which preceded the election, must be the complement of something done or existing before and calculated to influence the voter while the vote was in his power. An invitation given before to an entertainment to take place afterwards, or even a promise to invite, or a practice of giving entertainments after an election, which it may be supposed the voters would calculate on, would, if followed up by the treat afterwards, give to it the character of corrupt treating. But when the entertainment was, as it is proved in this case to have been, not only not mentioned, but not even thought of till after the election was over, no such entertainment ever having been given before, it cannot in my judgment be deemed corrupt treating within the meaning of the Act, if even its object was, as my brother Ballantine contends, to gain a hold upon the voters and secure their future support.”

The petition must be dismissed with costs.

Costs.

CASE XI.
COUNTY OF GALWAY.

BEFORE RT. HON. MR. JUSTICE KEOGH, APRIL 1, 1872.

Petitioner: Captain Trench.

Respondent: Captain Nolan.

Counsel for Petitioner: Mr. Serjeant Armstrong ; Mr. Murphy, Q.C. ;
Mr. Persse.

Agent: Mr. James B. Concannon.

Counsel for Respondent: Mr. MacDonough, Q.C. ; Mr. MacDermot.

Agent: Mr. Thomas Higgins.

THE petition* contained the usual allegations of treating and intimidation, and alleged further as follows :—

16. “ That by reason of the wrongful acts of the Respondent and his agents aforesaid, and by reason of each of them, the Respondent was disqualified and incapacitated from being elected as a representative for the said County of Galway, and his election and return was illegal and void.”

18. “ Your Petitioner did, on Feb. 3, 1872, being the day of nomination, cause a notice to be posted in the vicinity of the place of nomination for the said County, and to be advertised in several of the newspapers published in the said County, and to be extensively posted throughout all parts of the said County, which notice was in the words and figures following :—

COUNTY GALWAY ELECTION, 1872.

To the Electors of the County of Galway.

WHEREAS Captain John Philip Nolan, a candidate for the representation for the County of Galway, at an election now

* The whole petition is set out at length in the printed minutes.

ut to be held for the said County, has, on divers occasions, by self, his agents, and other persons on his behalf, been guilty treating and undue influence in relation to the election afore-, in such manner and form as the said offences are defined described in an Act of Parliament passed in the 18th year Her present Majesty, and known as, The Corrupt Practices Prevention Act, and in the several statutes now in force relating the said offences, and whereas, by reason of the said acts of treating and undue influence, and by reason of each and singular them, the said John Philip Nolan is incapacitated and disqualified from being elected as a Member of Parliament for the County. Now take notice, that all votes given for the said John Philip Nolan at the said election will be thrown away, and are null and void.

(Signed) "JAMES B. CONCANON,
Conducting Agent for Captain the Honourable William
Le Poer Trench, a candidate for the representation
of the County of Galway at the approaching
election."

9. "That on Feb. 6, being the day of polling aforesaid, your petitioner caused a copy of the said notice to be served upon each of the electors before voting for the Respondent or upon a sufficient number of the said electors to have reduced the poll of the Respondent below that of the Petitioner had such electors been allowed to vote for the Respondent.

10. "That a large number of duly qualified electors of the said County duly voted for Petitioner at said election."

And the petition concluded by praying that it might be determined that the Petitioner was duly elected, and ought to have been returned, or that the Respondent was not duly elected and returned, and that the election was void.

Evidence was given as to treating in several cases, but in none of them was the charge proved. As to the charge of spiritual intimidation by Roman Catholic priests an enormous amount of evidence was brought forward, the result of which was that it was proved, as Mr. Justice Keogh said, in his judgment,* that

* Page 44 of printed judgment.

there was a "foregone conclusion on the part of the Archbishop, his suffragan bishop, and the greater part, if not the whole, of the parish priests, with regard to whom evidence was tendered, to strain every point, to move every engine, to use every influence to gain their object, and that object I solemnly believe to have been, whether so intended or not, to overthrow all free will and civil liberty in this portion of Ireland."

The allegations in the petition with regard to giving notice of the disqualification of the Respondent were proved, and upon a case stated for the Court of Common Pleas to determine, (1) whether in consequence of the notice that was given "the electors who constituted the majority of the Respondents were fixed with sufficient knowledge of the disqualification of the Respondent, and should have acted upon such disqualification and refrained from voting for the Respondent, and (2) whether the Petitioner, there being no disqualification on his part, was entitled to be declared duly elected," the Court decided, (1) that the electors were fixed with sufficient knowledge, and (2) that the Petitioner was entitled to be declared duly elected.

Before the commencement of the case,

Rules adopted
by former
election com-
mittees, how
far now to be
followed.

1.

Mr. *MacDonough*, for the Respondent, referred the Court to certain rules* adopted by committees of the House of Commons for the trial of Election Petitions, which provided that counsel for the Petitioner should not go into matters not referred to in the opening statement without special permission from the Committee so to do, and that counsel for the Petitioners shall state full particulars as to their allegations of treating and undue influence.

Mr. Justice KEOGH stated, that although he desired to follow as closely as possible the procedure and practice of the formerly existing Election Committees of the House of Commons, the special reasons (such as distance from the locality and the like) upon which those rules referred were founded, did not apply, now that the trial of Election Petitions were conducted in the localities themselves. He added, that it was to be presumed

* See the preliminary resolutions usually agreed to by Committees set out in 1 P. R. & D. 1.

that counsel for the Petitioner would open their case fully, but without being rigidly tied down to minute details, and that although he would not seek to fetter counsel in their conduct of the case, he would take care that the fullest opportunity should be afforded to the sitting member of meeting any allegations which might be brought forward. He further added, that it did not appear that the Election Committees were in the habit of adopting any resolution with regard to giving the names of persons or places in cases of undue influence. He referred to the report of the Mayo Case, 1857,* which was a case specially of undue influence.

In the course of the case,

In support of the charge of intimidation a witness was asked by Mr. Murphy for the Petitioner :—

Q. Did anything occur to yourself on the night of the polling day?

A. Yes, I was attacked.

Mr. *MacDonough*, for the Respondent, objected to evidence as to anything that took place after the poll was closed, on the ground that there was no averment in the petition of anything connected with the charge of intimidation occurring after the election was over.

Mr. Justice KEOGH :—“ I do not know what it is, but it may be evidence. It does not follow that because it is immediately after the election it may not be connected with it for a variety of reasons which will occur to you at once. Besides which the election is not over till the declaration of the poll is made.”

And (later on in the inquiry) upon a witness being asked by Mr. Serjeant Armstrong for the Petitioners, to make a statement about something that occurred a week after the election ;

Mr. *MacDonough*, for the Respondent, objected.

Mr. Justice KEOGH :—“ Surely it must occur to you at once that if the Petitioners should fix the agency of any particular

Admissibility
of evidence of
what occurred
after the
election
8.

Procedure
with regard to
temporary
reception of
evidence.
20.

* Wolf & D., p. 1. It does not appear that it was ever customary for the Election Committees of the House of Commons to come to any resolution with regard to cases of undue influence.

individual, his declarations afterwards, referring to anything which took place at the election would be the same as the acts of the agent of the Respondent at the election. Independently of that, under this Act of Parliament,* I am charged with a special power, and a special duty, and it may become my duty to make a special report to the House of Commons, and I could call any witness† in the County to tell me anything which occurred which bore upon the state of the County at and previous to that election; so that matters occurring afterwards, and declarations made by parties *may* be most germane to this inquiry. I am not disposed at this stage of the proceedings to shut out this evidence."

Mr. *MacDonough* :—"Where agency has ceased‡ and the business is over, I submit that no agent has power."

Mr. Justice KEOGH :—"I cannot know that until I hear what it is. You shall not suffer. You are not here now with a jury. I will take care that you are not prejudiced in any way as far as any man can take care, by anything by which you are not ultimately bound. I have power under the Act § to hear all the acts at an election without agency being proved in the first instance."

Mr. *MacDonough* :—"I have perfect confidence that your lordship will not finally deal with anything but legal evidence."

Mr. Justice KEOGH :—"Certainly not. You must ultimately make it evidence, but there is a special Act of Parliament which, in these inquiries, makes a most important alteration in the law, and declares that I shall hear evidence of bribery, treating, and intimidation, or undue influence before agency is proved. It is quite an exception to the Common Law, and is made by statute."

Upon two witnesses being called upon their subpoenas and not answering,

Mr. Serjeant *Armstrong*, for the Petitioner, said :—

"My Lord, I am now in a position to say that an attachment will be moved for unless these witnesses appear."

* Parl. El. Act, 1868, § 11 (15).

† Ib. § 32.

‡ As to agency ceasing with the close of the poll. See *Salford case*, vol. i. 136.

§ Parl. El. Act, 1868, § 17. Vide ante, per Bramwell, B., vol. ii. p. 29.

Mr. Justice KEOGH:—"Certainly, and you can state at the same time that very serious powers and of a novel kind are given to me under the statute,* which I shall exercise, and also powers of adjournment† which can be exercised with the view of procuring the attendance of persons. The parties shall have the benefit of all the powers which the Act confers."

Upon a witness being asked in support of the charge of intimidation,

Q. Were you [on a certain occasion] in terror of your life?

A. No.

Q. Do you not know that you signed a letter stating that you were?

Mr. *MacDermot*, for the Respondent, objected to the question.

Mr. Serjeant *Armstrong* submitted that this related to the subject matter.

Mr. Justice KEOGH allowed the question to be put, and stated that this inquiry was quite a different inquiry to a suit between parties, and that evidence could be given wholly distinct from matters between the Respondent and the Petitioner. In the Dublin case, documents had been over and over again put into the hands of witnesses with a view of searching their consciences, and confronting them with their own previous statements in writing. ‡

A witness was asked in support of the charge of spiritual intimidation:—

Q. Did the Rev. Mr. Kemmy make any allusion last Sunday to this petition then pending?

Mr. *MacDonough*, for the Respondent:—"Does not your lordship think that you have ample matter to try without going into this?"

Mr. Justice KEOGH:—"In the Mayo case, 1857, § I see that the Committee received evidence of what was passing in the

Examination of witness as to previous statement in writing.

128.

Practice of former election committees followed where no special alteration made.

152.

* Vide Parl. El. Act, 1868, s. 32, and Rule XLI. For instances where this power has been exercised, see vol. i. 8, and vol. ii. pp. 3, 12.

† Parl. El. Act, s. 11 (12).

‡ See per Martin, B., in Cheltenham case, vol. i. 63. § Wolf & D., p. 1.

COUNCIL I have pending the very hearing of the petition. You have yourself more than once referred me to the fact that except where a special alteration is made by Act of Parliament I must be guided as far as possible by the practice of Parliament."

The question was allowed to be put.

Admission of
admissibility of
evidence not to
be reserved for
Court alone.

A witness was asked in examination in chief by Mr. Serjeant *Archer*, for the Petitioner:—

"If the tenants had been left free from harm and terror do you think that the bulk of them would have voted for the Petitioner?"

Mr. *MacDonagh*, for the Respondent, objected to the question on the ground that Committees had resolved not to disturb elections upon the ground of voting or intimidation of a general character.

Mr. Justice *Keech* stated that similar questions had been permitted to be asked in cross-examination by Counsel for the Respondent, and that if a question was good upon cross-examination there was no reason why it should not be equally good upon direct examination.

Mr. *MacDonagh* asked his Lordship to reserve the question of the admissibility of the evidence for the Court of Common Pleas.

Mr. Justice *Keech*:—"I do not think I am to be reserving objections to evidence for the Court of Common Pleas."

Employment of
scheduled
persons 33 &
34, 35, 36,
37, 38, 39,
40.

It appeared that Rev. P. Conway, who had been personally employed by the Respondent as a canvasser, had been reported by the Committee who tried the Mayo petition in 1857 as being "prominently active in the exercise of undue influence and spiritual intimidation."

Mr. Justice *Keech* said, as to this, in his judgment:—

"In this case the 44th section of the Parliamentary Election Act, 1863, creates no statutable disqualification to the Respondent, but if this trial was taking place in the year 1863 instead of 1872, that is within the period of seven years pointed to by that 44th section, the proving of the fact of that report coupled with the personal employment as a canvasser of the Rev. P.

Conway would have disqualified the Respondent for sitting for **this** county. He is only relieved from the consequence by the **solitary** fact of the seven years having expired which are fixed by the Act of Parliament.*

It was proved that the Respondent on November 16, 1871 (that is, about three months† before the election), wrote the following letter to Father Lavelle, who was notorious in the neighbourhood as an active political partizan :—

Effect of letter written by Respondent in creating agency.

13.

“MY DEAR FATHER LAVELLE,—

“I have been lately a good deal about the country, and have tried to ascertain the sentiments of the different dioceses with regard to a clerical conference at Athenry. The leading clergymen of Kilmacduagh are all very favourable to the idea. In Clonfert I have seen eight or nine priests, and all approve of it highly. Still there is a difficulty. No priest in Clonfert likes to be the first to ask his fellows. The Very Rev. T. Burke is the natural leader. I have missed seeing him, although I waited two days at Portumna, but I fear that unless some influence is brought to bear upon him he will not lead. I see my way in this respect pretty clearly, but the one link is Father Burke. Two or three Tuam priests might write to Rev. Mr. Shannon and propose a conference. He would certainly agree, and might in turn invite the Galway priests and the three conjointly to the Clonfert clergy. The only practical difficulty I see here is that the invitation would have to be addressed to Father Burke. Still he would hardly refuse the invitation from the three dioceses. The objects for which the conference would meet are solely first to determine how far the clergy should go in asking tenants to vote against their landlords, so that there might be a uniform action upon this point. Secondly, to organise a popular meeting at Athenry. I find the clergy very favourable to these points.

“Sincerely yours,

“J. P. NOLAN.”

* Vide *dictum* of Blackburn, J., as to this in North Norfolk case, vol. i. 238.

† The election was held on Feb. 6, 1872.

Mr. Justice KEOGH said, in his judgment as to the effect of this letter :—

“ If, after the writing of this letter, the Respondent had returned to his military duties, and had never again appeared in the country until after the election was over, he would have been within the authority of the decision in the Blackburn case by Mr. Justice Willes,* and have made every bishop, every priest from the highest to the lowest, who acted at these meetings, so called into existence by the Respondent’s own act, his agent for the purposes of this election.”

Interference of
peers in
elections.

48.

It was proved that the Marquis of Clanricarde had said to a number of his tenants, “ If you can vote for my friend Captain Trench I shall be delighted if you will do so ; if you cannot vote for him, at all events stay at home and do not vote against him,” or something to that effect. Upon this evidence it was sought on the part of the Respondent to get the marquis reported to the House of Commons under s. 11 (15) of the Parliamentary Elections Act, 1868, as having acted illegally by contravening the resolution† of the House with respect to the interference of peers in elections.

Mr. Justice KEOGH, in his judgment, said as to this :—

“ I utterly deny the proposition that any resolution of the House of Commons would make law. The first judges that have ever sat upon the bench have denied it.‡ But I say more,

* Vol. i. p. 200.

† The following is the resolution referred to. Resolved : That it is a high infringement of the liberties and privileges of the Commons of the United Kingdom for any lord of Parliament or other peer, or prelate not being a peer of Ireland at the time elected, and not having declined to serve for any county, city, or borough of Great Britain, to concern himself in the election of members to serve for the Commons in Parliament, except only any peer of Ireland at such elections in Great Britain respectively, where such peer shall appear as a candidate, or by himself or any others be proposed to be elected ; or for any lord-lieutenant or governor of any county to avail himself of any authority derived from his commission to influence the election of any member to serve for the Commons in Parliament.

‡ Per Lord Campbell in the House of Lords, June 23, 1853, Hans. 128, 3rd ser., p. 790, and July 5, 1858, Hans. 151, 3rd ser., p. 926. See these dicta

ely, that the House of Commons by its resolution never ended to deprive any nobleman, who was also a landlord, of legitimate influence.* I say it would be a sorry day for this country (and for none more than for the tenant class themselves) if landlords, noblemen, or gentlemen were entirely shut off from exercise of that legitimate influence which a landlord has a right to use. Over and over again things of this kind have been brought before Parliament. One of the first cases of the violation of that resolution which was brought before Parliament was in the case, I think, of a Bishop of Winchester.† There was another case in the time of the late Earl Fitzhardinge.‡ There were other cases, such as that of the late Duke of Newcastle,§ who went against his own son and turned him out of Parliament, because he was disposed to vote for the repeal of the corn laws. It was a very strong case. The attack was made upon Sir Robert Peel, who was then Prime Minister, and who it was supposed would lean to the charges, because the duke was turning his son on the ground that he chose to be a supporter of Sir Robert Peel. But Sir Robert Peel said, ‘No matter what this nobleman may have done or said against me, I know the principles of the British Constitution, and I will stand by them. I forbid that those resolutions should ever be intended to exclude the legitimate influence of peers.|| In every single case in which those charges were brought before the House of Commons, the House left the charges where it found them and took no determination of doing nothing.¶ I do not consider that

aid by Wills, Q.C., *arguendo* in *Earl Beauchamp v. Madresfield*, L. R. 8 C. P. 248.

See speech of Lord Brougham cited in *Earl Beauchamp v. Madresfield*, L. R. 8, C. P. 248.

It was a Bishop of Worcester. See speech of Mr. Cobbett in the House of Commons, Feb. 19, 1846, on the interference of certain peers in elections; reported in 83 Hansard, 3rd series, p. 1172.

See motion of Mr. Wakley, Dec. 14, 1847, as to this, and debate thereon; reported in 95 Hansard, 3rd series, p. 1067.

¶ This was one of the cases as to which Mr. Cobbett moved for an inquiry before the Committee of Privileges, 83 Hansard, 3rd series, p. 1180.

See further remarks of Sir R. Peel to the same effect, 83 Hansard, 1184.

On May 12, 1848, a motion of Mr. W. Page Wood (now Lord Hatherley) for an inquiry by a Select Committee as to a charge of interference by the

Lord Clanricarde has overstepped the bounds of that legitimate influence which he has a right to exercise, or that he has done anything which, unless I was to make him an absolute slave under the terms of the Act, I could prevent his doing. I shall not report Lord Clanricarde as having exceeded either any principle of the common law or any provision of the statute law."

Mr. Justice KEOGH, in his judgment, declared the election void both at common law and under the statute on the ground of undue influence, but reserved the question as to the claim of the seat by the Petitioner for the consideration of the Court of Common Pleas.*

With regard to general corrupt practices, he said :—

As to general
corrupt prac-
tices.

"My judgment in the Dublin case† has been referred to. In that case I said, 'General bribery or general treating will invalidate an election, even although it be not directly traceable to the candidate, and I say above all things that general intimidation and undue influence, whether it is lay or ecclesiastical, whether it is the ecclesiastic of one persuasion or the ecclesiastic of another, whether it is the Protestant Episcopalian minister or the Roman Catholic priest or the minister of any other of those innumerable sects which I believe are to be found existing all over the face of the world, will upset every election at which it is practised.' I see no reason to qualify in any way a single word which I stated in that judgment. I then believed, and I still believe it to be the law as laid down by the greatest authorities. I see no reason to take any other authority than that which I then made use of,‡ namely, the celebrated argument and the

Marquis of Exeter in the Stamford election was carried by a majority of one: see 98 Hansard, 932. A committee was appointed in consequence, and reported on July 22, 1848, that the charge against the Marquis of Exeter was not proved.

* The Court decided that the Petitioner ought to have been and should be now returned. The case as stated for the opinion of the Court, together with a report of the arguments, and the judgment of the Court, is to be found in Irish Reports (Common Law), vol. vi., p. 464; 20 W. R. 833; 27 L. T., N. S., 48.

† Vide vol. i., p. 273.

‡ Vide Judgments, p. 344. The case of *Huguenin v. Bassey*, 14 Ves. 205, was also cited by Keogh, J., in his judgment in the Galway Town case, vol. i., p. 305.

magnificent language of Sir Samuel Romilly in *Huguenin v. Baseley*, 14 Ves. 288."

As to undue influence as defined by statute, he said :—"What Clerical influence, how far legitimate. undue influence? I refer to the 5th section of 17 and 18 Vict. c. 102. It is impossible for any vocabulary of the English language to add one single word to the fulness of that definition. In the Galway town case* I had to consider this Act, and, although I declared that the legitimate influence of the clergy was desirable (and I declare now that the legitimate influence is desirable, that the priests have a right to exercise their legitimate privileges in the same way as other classes), and although I specially denied, in express words, as cogent and concise as I could use, the absurd proposition that no landlord was to use any influence with his tenants, and I declared that no steadier, safer, or more legitimate influence than that of the landlord over his tenant could be used, I went on to say that the influence of the clergy must be *legitimately* exercised, and I added these words, that if *unduly exercised* by any of them, the higher the person who used it the more fearlessly he ought to be dealt with. I care not,' I said, 'whether he be curate, parish priest, administrator, bishop, or archbishop, I cannot go higher than that in this country, but if undue influence at an election were proved before me to have been exercised within the limits of the law, and if my own reason, consulting as to the proper deductions to be drawn from the facts, I would, without the slightest hesitation in the world, find that to have been an undue election.'† I further declared (and to these words I wish especially to direct the attention of my learned friends) in the Galway town case three years ago, that 'if a single elector, the most miserable reeman that crawls about this town, had been refused the rites of the Churches in order to compel him to vote or because he had voted, or because a member of his family had voted in a particular way, I would have avoided this election without the slightest hesitation,' and I added, 'If the Legislature in its goodwill and leisure and judgment (the bill was then going through Parliament for the disestablishment of the then Established Church) minded to strike down what is called one ascendancy, I hope

* Vol. i. p. 306.

† Vide Judgments, p. 347.

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... believe that the intelligence, the spirit, and the independence of the lay Catholics of this country will prevent the setting up of another ascendancy over them more galling and fatal through coming from the midst of their own community.' I see no reason to alter or qualify a single word that I said upon that occasion." *

He then cited, with approval, certain passages from the judgments of Mr. Justice Fitzgerald in the Longford case,[†] and Mr. Baron Fitzgerald in the Limerick case,[‡] as to the effect of undue clerical influence.

Point of law,
how to be
reserved.

As to drawing up the case for the decision of the point of law reserved for the Court of Common Pleas, he said:—

"I shall draw up the case. I have the sole and entire control of it; it is within my dominion as sitting here as judge to try this case by the law of the land. I shall submit that case, giving the counsel on both sides an opportunity to argue it." §

Application
made by Re-
spondent to
report persons
for corrupt
practices.

As to reporting persons under s. 11 (14 b.) of the Parliamentary Elections Act, 1868, as guilty of corrupt practices, he said:—

"The only remaining topic is one upon which I never heard a judge addressed before upon the trial of any election petition. It may have been done, but I am not aware of it. The counsel acting on behalf of the Respondent (though in this particular instance they should have been acting more on behalf of public right) ask me to report to the House of Commons that certain persons have been guilty of intimidation against some of the voters being their tenants. Now all the arguments which were addressed to me upon this subject were arguments in which neither of the parties were concerned. I say that I never heard an argument of the kind addressed to a judge before. It is extraneous to the rights of the parties, and it is for the judge, I conceive, himself to see whether there is proper ground for such a report."

Costs.

Costs followed the event.

* Vide Judgments, p. 347.

† The passage is given in ante, p. 16, beginning at the words, "In the proper exercise of that influence," down to end of the paragraph.

‡ The passage is given in vol. i., p. 262, beginning at the words, "If, as it has been admitted," down to the end of the paragraph.

§ But see the observations of Bramwell, B., in the Bristol case, ante, p. 29.

CASE XII.

BOROUGH OF GLOUCESTER.

BEFORE MR. JUSTICE BLACKBURN, JULY 15, 1873.

Petitioners: Sir William Guise, Bart., and others.

Respondent: William Killigrew Wait.

Counsel for Petitioners: Mr. Serjeant Sargood; Hon. Chandos Leigh;
Mr. Le Marchant.

Agents: Messrs. Wiltons and Riddeford.

Counsel for Respondent: Mr. Hardinge Giffard, Q.C.; Mr. Norris; Mr. Kydd.

Agents: Messrs. Taynton and Son.

THE petition contained the usual allegations of bribery, treating, undue influence, and corrupt practices, and also alleged fourthly, that, "At the said election certain persons were procured by the Respondent, or by his agents, or by others on his behalf, to personate and falsely assume to vote in the names of certain other persons whose names appear in the register of persons entitled to vote at any election of a member or members to serve in Parliament, which might take place in and for the said borough during the year commencing Jan. 1st, 1873, whereby the Respondent was and is incapable of being elected or sitting in Parliament during the Parliament now in existence, and the said election and return of the Respondent were and are null and void."

And fifthly,—“That at the said election the Respondent by himself, or by his agents, aided, abetted, counselled, or procured

the commission at the said election of the offence of personation by a certain person or certain persons whereby the Respondent was and is incapable of being elected," &c.

The charges of bribery and treating were abandoned. Evidence was given as to several charges of personation, but the evidence in each instance failed to establish a case.

In the course of the case,

Doubtful whether ballot papers used at municipal election may be inspected on the trial of a petition relating to a parliamentary election.
(1) 122.

Mr. Serjeant *Sargood*, for the Petitioner, applied to inspect the ballot paper which had been used by a voter at the last municipal election, it having been proved that that voter had voted at the Parliamentary election which was then being questioned.

Mr. Justice BLACKBURN :—" Whether I can at a Parliamentary election open the ballot papers used at the municipal election, is a matter which the Legislature has left in doubt, and I do not want to have to decide it, unless it becomes absolutely necessary." *

Whether certain cards issued by the Respondent's committee were a fraudulent device within the meaning of s. 5 of Corrupt Practices Act.

It was admitted by the Respondent's party that they issued cards to a large number of voters, similar in shape and appearance to ballot papers, and having a mark on them put opposite to the name of the Respondent. It was stated on the cards that if any voter marked his ballot paper otherwise than in the way in which the card was marked, his vote would be invalidated. It was contended on the part of the Petitioners that the issuing of cards like this, was an attempt to obtain votes by a fraudulent

* By rule 64 (b) of the Ballot Act it is provided, as to municipal elections, that "all ballot papers and other documents, which in the case of a Parliamentary election are forwarded to the clerk of the Crown, shall be delivered to the town clerk of the municipal borough in which the election is held, and shall be kept by him among the records of the borough; and the provisions of part one of this schedule with respect to the inspection, production, and destruction of such ballot papers and documents, shall apply respectively to the ballot papers and documents so in the custody of the town clerk, with [certain] modifications." Then follow the modifications, one of which is that an order of the County Court judge granting inspection shall be substituted for the order of the House of Commons, or of one of the superior courts.

vice, and that it was a contravention of s. 5 of 17 & 18 Vict. c. 102, which enacted that "every person who shall directly or indirectly . . . by any fraudulent device or contrivance, impede, prevent, or otherwise interfere with the free exercise of the franchise of any voter . . . shall be deemed to have committed the offence of undue influence," and that consequently the election ought to be declared void.

Mr. Serjeant *Sargood* proposed to supplement what was admitted by calling witnesses to prove what in several instances the effect produced by these cards really was.

Mr. Justice BLACKBURN :—"The real question is, what was the effect likely to be intended to be produced."

Mr. Serjeant *Sargood* upon that intimation from his Lordship, said that he need not call any witnesses.

Mr. Justice BLACKBURN :—"If I come to the conclusion that those who issued the cards intended to trick people into putting a mark for Robinson (the other candidate) for fear that it should validate their vote, that I suppose would be a fraudulent device within the meaning of the Act."

Mr. Serjeant *Sargood* : "That is the point, and I believe we have never had it before."

After hearing counsel on both sides as to this point, Mr. (2) 321.

Justice BLACKBURN said as follows :—"I agree with what all the counsel have said on the point of law, that where there is a fraudulent device of any sort to prevent a voter from voting in a certain way, that would come within the intention of the Corrupt Practices Act. Therefore, if I come to the conclusion that these cards were intended to produce the effect that Robinson's voters should vote for the Respondent, I should be inclined to say that the Act had been contravened. Now, though I do not doubt that there may be voters in Gloucester who are not intelligent enough to understand the meaning of the directions put upon the cards,—and I think, therefore, it would be as well in the future that people should not put any directions upon such cards as these which may possibly mislead—I cannot believe that the committee who issued these cards were speculating upon their being able to mislead the voters in that way so as to have had a fraudulent intention. Therefore, as the intention to mislead

is an essential part of what was done being held to have been fraudulent, this part of the Petitioner's case fails."

Employment of voters to keep order invalidates votes.

It was proved that each party agreed to appoint and pay twenty-four men to keep order at the doors of the various polling stations.

214.

Mr. Justice BLACKBURN said as to this in his judgment:—"I think this was honestly intended, but I am by no means clear that it would not have the effect of making these forty-eight votes bad on a scrutiny, and I am sure it would be much better in future to let the returning officer and the local authority select themselves the proper number of officers to do the work, and not to delegate it to the political parties."

Employment of voters, when colourable.

It was proved that each party having agreed to appoint and pay twenty-four men to keep order at the doors of the various polling stations, the Respondent's party appointed five men too many. These five men being disappointed of being thus employed, assisted the Respondent's party in bringing up voters on the day of the election, and themselves voted. There was no agreement that they were to be paid for the work they did, but on the evening after the election they came to the Respondent's agent and claimed to be paid. The agent thereupon gave them five shillings apiece. He subsequently entered this amount in the vouchers as part of the election expenses, and it was repaid to him by the Respondent. It was submitted by the Petitioners that the payments to these men were merely colourable, and were in fact bribes.

221.

Mr. Justice BLACKBURN in his judgment said on this:—"Certainly the votes of these men would have to be struck off on a scrutiny, but when I am asked to go further, and to say that a thing like this which they do openly in that way with no pretence at concealment, was a cover for intentional bribery, I must say I cannot draw the inference from the facts."

When aiding in personation by agent will invalidate election.

It was proved that the name of George Williams, of Brook Street, was on the register, and that there were two persons of this name living in Brook Street at the time of the election;

one of them had not come to live in Brook Street until so late for him to have his name put upon the register, it is clear that he was not the man meant to be upon the register. That George Williams voted first, and upon the other George Williams applying for a ballot paper at the instigation of the Respondent named Pickard, he was taken before the magistrates and committed to take his trial for personation. Mr. Pickard stated, upon being called as a witness, that he firmly believed at the time he canvassed Williams that he was the man whose name was on the register. Nevertheless, upon these facts, the counsel for the Petitioners submitted that the Respondent was guilty of personation by his agent Pickard, and that his election must be avoided under s. 24 of the Ballot

Justice BLACKBURN said as to this in his judgment :— 229.
 That the accused man, George Williams, did not come to live in Brook Street until it was too late for him to be registered, I am satisfied that he was not the man meant upon the register, but that the man whose vote has been counted was the Respondent. If the accused man was aware of that when he applied for a ballot paper, he was guilty of personation; he may have made a mistake as to what he was about, of that I say nothing, there will be evidence of this to be considered when the case is brought up for trial. But as to Mr. Pickard, after the evidence that he has given, I cannot say that he could have been a party to this personation, because he honestly believed that George Williams was the right George Williams, and I need not say it is obvious in point of law that in that case he is not a party to it."

It is proved that the name of John Gage, who was the father of George Gage, was on the register. Some months before the trial, John Gage went away from the borough, and his son continued to occupy and pay rent and rates for his father's house. George Gage was under twenty-one, and was not on the register. Notwithstanding this, one Maslyn, who was held to be an agent of the Respondent, induced him to vote for his father's name. Maslyn, however, when called as a witness, stated that he knew nothing of George Gage's father, that he

What must be proved in order to establish a case of personation by agent.

did not know George Gage's Christian name, and that he honestly believed at the time that he canvassed him that he was the person whose name was on the register.

236.

Mr. Justice BLACKBURN in his judgment said as to this:—"If Maslyn knew that John Gage was the person who was the voter, and not George, and, notwithstanding this, sought to persuade George to go and vote instead of John, he would of course have been guilty of the offence of personating, and if his agency was proved, the seat would be forfeited. But after Maslyn's distinct oath, I cannot come to the conclusion that he is now committing perjury and was then committing felony. I must therefore hold that this case fails."

Mr. Justice BLACKBURN in his judgment declared the Respondent duly elected.

Law as to
personation.
224.

As to personation, he said,—“There is very little doubt, indeed, as to what the law is upon this subject. With the Ballot Act and secret voting, it becomes a very dangerous offence if any one goes to vote and contrives to get a vote registered in the name of another person when he has no right to vote, for, unless the vote of a personator is objected to, there is no machinery provided for enabling us to examine upon which side that vote was given in order to strike it off. If, however, it is once brought home, and it is shown that a particular man did not vote, but another person personated him, the vote given by that other person becomes invalid, and there is a provision * for inspecting that vote and striking that vote off on a scrutiny. That makes it a very dangerous thing indeed, and therefore the Legislature have been very anxious to prevent it, and they have made a very severe penalty for it,† but I do not say it is a bit too severe to prevent a practice which always must be very fraudulent. They further proceed to say that when this corrupt practice is shown to be committed by an agent of the sitting member, not only will the agent be guilty of a felony, but it shall also vacate the election, and forfeit the seat. Of course this is a very severe penalty on the sitting member, and though in a great many cases I have felt that for a small error

* Ballot Act, Rule 41.

† Ballot Act, s. 24.

on the part of the agent, it was rather hard that the sitting member should lose his seat, yet I do think that where he has employed an agent who is capable of doing such a thing as persuading another to fraudulently personate and obtain a vote, knowing he was not entitled to it, he properly enough suffers the penalty of having trusted such a person with the management of his election."

Costs followed the event.

Costs.

CASE XIII.
BOROUGH OF TAUNTON.

BEFORE MR. JUSTICE GROVE, JAN. 12, 1874.

Petitioners: John Marshall and Walter Chorley Brannan.

Respondent: Sir Henry James.

Counsel for Petitioners: Mr. Charles Russell, Q.C. ; Mr. W. G. Harrison ;
Mr. A. Collins.

Agents: Messrs. Kimber and Ellis ; Mr. Blake.

Counsel for Respondent: Mr. Serjeant Ballantine ; Mr. Hardinge Giffard, Q.C. ;
Mr. J. O. Griffiths.

Agents: Messrs. Holmes, Anton, and Co.

THE petition contained the usual allegations of bribery, treating, undue influence, and personation, and general bribery and treating, but did not pray the seat.

The charge of personal bribery was withdrawn before the conclusion of the case.

In support of the charge of general corruption, "painful disclosures were made, applying to a portion of the constituency, small with reference to the whole body, but not absolutely inconsiderable, which showed, by the mere exhibition of the witnesses themselves, that there were a certain number of voters who, for a small bribe or a small supply of drink, would promise their votes to either candidate, and some of whom had reached the lowest stage of degradation, that they gloried in their

ie ; " * but it was not proved that extensive bribery or
option prevailed at the election.

support of the charge of bribery by agent, evidence was
with regard to a considerable number of cases, but,
ugh it was proved that bribes had been given in several
, the agency of the briber was in none of them esta-
ed.

the course of the case,

. *Harrison*, for the Petitioners, asked a witness :—" Since
petition has been filed, has there been anything noticeable
the streets of Taunton ? "

Evidence as to
what occurred
after the
election.

. Serjeant *Ballantine* objected to the question.

. *Harrison* :—" Have you seen a number of persons about
streets of Taunton ? "

tness :—" Yes ; I have seen a number of persons, since the
on has been lodged, watching and spying about the streets
unton."

. Serjeant *Ballantine* objected to the reception of this
nce, on the ground that there was no presumption of
y with respect to these persons which would affect the
g member.

. *Giffard* also pointed out that, in the *Lynn* case,†
n, B., held that the termination of the election was the
nation of agency, and that if it is wished to prove it
ards, it must be proved by the general law.

. Justice GROVE stated that he understood the Counsel for
petitioners to ask him to draw the inference that because
n persons had been employed in the interest of the sitting
er after the election, therefore those persons had been
yed as agents before the election. Unless Mr. Russell
produce a case in which it had been so ruled, he (Mr.
e Grove) must hold that the two things were legally
ther unconnected.

question was not further pressed.

r Grove, J., in his judgment.

D. & H. 208. See also *Salford* case, *ib.* 136 ; and per Blackburn, J., in
th Norfolk case, *ib.* 243.

Subsequently,

Mr. *Russell*, for the Petitioners, asked a witness the following question :—" Did you, on Jan. 10 (that is, after the election), meet Mr. Burnam and two other persons together ? "

Witness :—" Yes."

Mr. Justice GROVE :—" Now you are getting to what occurred after the election."

Mr. *Russell* submitted that the further questions which he was about to put to this witness stood in a different category. He was proposing to prove that Mr. Burnam, who had been admitted to be an agent, and who, he should by-and-by prove, had continued to act as an agent after the election was over in getting up evidence for the petition, had employed persons to watch one Smith, and to give information against Smith to the witness, who was an Excise Officer.

Mr. Serjeant *Ballantine* objected to the evidence.

Mr. Justice GROVE asked Mr. *Russell* if he could refer to any authority in support of his right to put the question, remarking that Willes, J., in the *Bodmin* case,* had expressed himself very strongly upon the subject.

Mr. *Russell* stated that he had examined the cases,† and he thought he was justified in saying that in every one of them the question was whether the alleged acts or the alleged statements could be relied upon as evidence of corrupt practice for the purpose of unseating the member, but he (Mr. *Russell*) was going to use this evidence for a different purpose. He did not allege that the acts to be spoken to would be corrupt acts so as to unseat the member, but as a strong corroboration of two things—first, of the truth of Smith's story; and secondly, that certain persons had been brought together in concocting this charge against Smith, and giving this information.

Mr. Justice GROVE stated that, though the evidence proposed to be given might possibly show misconduct on the part of Burnam, who was admitted to be an agent, it could not, so far as he could see, go towards corroborating or contradicting Smith.

* 1 O. & H. 118.

† Bridgewater, 1 O. & H. 114; Waterford, 2 O. & H. 3; Longford, *ib.* 12; Galway, *ib.* 49.

even supposing that the evidence were admissible, he could not say that the conduct of Burnam after the election, when he could no longer be acting as an agent for election purposes, could be proved collaterally to contradict any other witness.

Mr. *Russell* reminded his lordship that he had stated that he proposed to prove that Burnam had been acting as an agent before the election in getting up the petition.

Mr. Justice GROVE stated that that would be good ground for cross-examining Burnam, and attempting to shake his testimony when he was called, but that did not at present bear upon the issue to be raised.

Mr. *Russell* submitted that at all events he was entitled to show that Burnam and others were acting together in this matter.

Mr. Justice GROVE stated that Mr. *Russell* had already got out the fact that Burnam and two others were together, and he might, if he pleased, get the further fact that there were two more with him, but he must not go beyond that.

Sir Alfred Slade (the unsuccessful candidate at the last election) being asked,—

‘During your own personal canvass was anything said to you by the voters whom you were canvassing as to money or drink?’

Evidence of what was said to unsuccessful candidate while canvassing.

Mr. Serjeant *Ballantine* objected to the witness being asked as to what the voters had said to him.

Mr. *Russell* submitted that the question was pertinent to the issue, whether or not general corruption prevailed in the borough at the last election.

Mr. Justice GROVE stated that evidence as to the conduct of voters would be clearly admissible, and he thought that an application for drink would be evidence of general corruption.

Mr. Serjeant *Ballantine* further objected to the reception of the evidence on the technical ground that the Respondent ought to have had notice in the bill of particulars to the special acts or statements leading to the conclusion of general corruption.

Mr. Justice GROVE: “I do not think the point is free from doubt; but I rule against you, Brother *Ballantine*. In proving

general corruption, it would be impossible to specify names.* The utmost particulars that they could give you would be of no use to you, because it would be simply that several voters, whose names were unknown, applied to the candidate in the course of his canvass for drink; this would not assist you much. If names are obtainable and are not in the particulars, you may have some ground of objection; but if no names are able to be given, it is admissible as proof of general corruption."

Order for
attendance of
witness.

Upon a witness being called on his subpoena and not answering,

Mr. *Russell*, for the Petitioners, asked his lordship to give an order to compel his attendance.

Mr. Justice GROVE stated that he could not do so unless it were proved that the witness was intentionally keeping out of the way.

Mr. *Collins* referred the Court to the observations of Baron Martin in the Norwich case† as to a person named Hardiment.

Eventually the witness appeared in court, so that an order became unnecessary.

Admissibility
of evidence as
to former
petition.

Mr. *Russell*, for the Petitioners, proposed to prove what had occurred with regard to a petition presented by the present Respondent as to a former election, and that the names of some of the persons now acting as agents for the Respondent had been inserted in the particulars as to bribery given by the present Respondent as to the former petition.

Mr. Justice GROVE: "I am of opinion that the evidence is inadmissible. Of course it is always a more serious matter for a judge to decide a question where his decision cannot be reviewed; but that is no reason why he should decide against the judgment of his own mind. Let us look at what the evidence comes to. It is in fact asking me to admit as evidence in this case tending to affect my mind that certain persons are likely to be corrupt because their names were given in a list of particulars as to a former petition by the gentleman who is now the Respondent, it being stated in those particulars that those

* See Beverley case, 1 O. & H. 143-145.

† 1 O. & H. 9.

ons were guilty of corrupt practices. The decision as to former petition went upon different grounds from anything now inquiring into in this case, namely, upon the payment of barrister's money,* and there was no proof that the persons mentioned in the particulars were guilty of the corrupt practices alleged. But even supposing the persons alleged to be guilty had been proved to be so, I am not aware that in law or fact that a person has been by the verdict of a jury found guilty of corrupt practices, can be used in a subsequent trial against different parties further than this, that the person alleged to have been guilty of corrupt practices, if put into the witness box, can be cross-examined on the subject. You might just as well say with regard to any witness called, without cross-examining him, prove affirmatively that somebody else had on some previous occasion made a charge against the witness that he had done something wrong. I need not, addressing lawyers, contend or say that that would be clearly inadmissible, and I cannot see any grounds for holding that this evidence is admissible. There is also another practical objection, that would not be itself perhaps a legal objection, if the evidence was admissible; but I am not sure that it does not amount to a legal objection, and this is, that it is a collateral issue which I should have to try. I should have to try the whole of the circumstances of the former petition, how far the charges were properly made, whether the charges were established, or whether they were shown to be wholly groundless,—I should have to go into all this—before I could proceed to apply that evidence to the present case."

Mr. Russell:—"The effect of your lordship's decision would be to set aside the tender of the proceedings in the former petitions."

Mr. Justice GROVE:—"Yes, certainly, unless they are admissible upon any other grounds."

His lordship then went on to say further as to this matter as follows: "This is not a point that can be reserved for the Court, because a point reserved for the Court must go to the whole trial. A point reserved must be such a point that if the Court decide it against my ruling, it will affect the whole result of the trial. No point can be reserved unless it goes to the whole result."

When a point
may be
reserved.

* See 1 O. & H. 181.

Production of
telegrams.

Mr. *Russell*, for the Petitioners, stated that he required to see certain telegrams which had passed from Taunton to other places at certain dates, but that the officials of the Telegraph department were unwilling to produce them, unless required for the purpose of a judicial inquiry. He therefore now asked the Court to give an intimation to that effect.

Mr. Justice GROVE stated that in any case, before the telegrams were examined, there should be something limiting the examination.

Mr. *Russell* stated that that could not be done.

Mr. Justice GROVE said that this was a matter involving a great deal of difficulty on public grounds, and that he desired, before giving his decision upon the point, to have the opinion of the two other election judges upon it. He then inquired what were the telegrams which Mr. *Russell* proposed to look at.

Mr. *Russell* stated that he proposed to look at any telegrams to and from the persons alleged by the Petitioners to have been acting as agents in the election; and he offered, in order to obviate any inconvenience, to furnish a list of the persons to and from whom the Petitioners alleged telegrams to have passed and which they desired to inspect.

An officer from the Post Office called the attention of the Court to the enactment of 1869, 32 & 33 Vict. c. 73, s. 23: "That nothing in this Act shall have the effect of relieving any officer of the Post Office from any liability which would but for the passing of this Act have attached to a telegraph company or any other company or person to produce in any court of law, when duly required so to do, any such written or printed message." He stated that the subpoena served upon him was for "all telegrams and copies of telegrams sent to and from the town of Taunton from the commencement of September last to the present time." In obedience to that subpoena he had brought with him all the telegrams sent from Taunton during that time, those being all that were in existence.

On a subsequent day,

Mr. Justice GROVE said as follows as to this :—

"I have received an answer from my learned brothers, whom I have consulted with respect to the production of the telegrams,

they coincide in the opinion which I rather intimated on day, though I did not express a formal decision, that I edly ought not to interfere to compel the production of telegrams, or even to say anything to the Post-Office as to procure their production. I do not wish to go into ns for the decision, for this reason, namely, that I am not is decision saying that cases might not arise where, upon g specific grounds being shewn, the judge might interpose uthority; but all I say is, that certainly the present is not a case."

. *Russell*:—"Perhaps your lordship will allow me to say thing by-and-by as to these telegrams; at present I will ake any application about them."

. Justice GROVE:—"Do not understand what I have said as ng an application; but in what I have said I am only ous of preventing my decision being taken in a wide sense might trammel other judges. I take it that the witness es to produce the telegrams of his own authority. That as already said to me. I do not interfere with the Post- e authorities if they on any occasion of their own accord e to do certain acts. That is no business of mine. I do ompel or invite them to produce these telegrams.

. Justice GROVE, in his judgment, declared the Respondent elected.

to the law of agency, he said as follows:—"The law of y, as applied to election petitions, has been differently ssed by different learned judges, some of whom have ed it to the relation of master and servant,* and another e employer of persons to run a race for him;† but no exact ition, meeting all cases, has, as far as I am aware, been u. Two learned judges—the late Mr. Justice Willes and Justice Blackburn—have pointed out‡ the difficulties of

Law of agency
discussed.

er Martin, B., Norwich case, 1 O. & H. 11, and Westminster case, *ib.* 95.
er Willes, J., Westbury case, 1 O. & H. 55; Tamworth, *ib.* 81; Coventry,
7; Blackburn case, *ib.* 202.

er Willes, J., Tamworth, 1 O. & H. 81; per Blackburn, J., Staleybridge,

arriving at one. All agree that the relation is not the Common Law one of principal and agent, but that the candidate may be responsible for the acts of one acting on his behalf, though the acts be beyond the scope of the authority given, or, indeed, in violation of express injunction. So far as regards the present case, I am of opinion that, to establish agency for which the candidate would be responsible, he must be proved by himself or by his authorized agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause with them for the purpose of promoting his election. To what extent such relation may be sufficient to fix the candidate must, it seems to me, be a question of degree and of evidence to be judged of by the Election Petition Tribunal. Mere non-interference with persons who, feeling interested in the success of the candidate, may act in support of his canvass, is not sufficient, in my judgment, to saddle the candidate with any unlawful acts of theirs of which the tribunal is satisfied he or his authorized agent is ignorant. It would be vain to attempt an exhaustive definition, and possibly exception may be taken to the approximate limitation which I have endeavoured to express."

As to the nature of tribunal, and of the evidence required to establish a case.

With regard to the nature of the tribunal and of the evidence which should be adduced in order to establish a case, he said: "It must be borne in mind in these cases, that although the object of the statute by which these election tribunals was created* was to prevent corrupt practices, still the tribunal is a judicial, and not an inquisitorial, one;† it is a court to hear and determine according to law, and not a commission armed with powers to inquire into and suppress corruption. To use the language of that eminent judge, the late Mr. Justice Willes, 'No amount of evidence ought to induce a judicial tribunal to act upon mere suspicion or to imagine the existence of evidence which might have been given by the Petitioner, but which he has not thought it to his interest actually to bring forward, and to act upon that evidence and not upon the evidence which really has been brought forward. The second principle, which is more

* 31 & 32 Vict. c. 125.

† Vide ante, vol. i., pp. 6, 48, 227.

particularly applicable to circumstantial evidence, is this, that the circumstances to establish the affirmative of a proposition, where circumstantial evidence is relied upon, must be all, such of them as are believed, circumstances consistent with the affirmative, and that there must be some one or more circumstances believed by the tribunal, if you are dealing with a criminal case, inconsistent with any reasonable theory of innocence, and when you are dealing with a civil case (otherwise expressed, though probably the result is for the most part the same), proving the probability of the affirmative to be so much stronger than that of the negative that a reasonable mind would adopt the affirmative in preference to the negative.* Baron Martin says:† ‘I will not act upon anything as to which there possibly may be a mistake or error; but I think I do right when an election is sought to be impeached, not because of an act done by the candidates themselves, but for an act which they have forbidden, in requiring to be convinced beyond possibility of error that the act relied upon by the Petitioners which is to unseat the members did actually take place. If I am satisfied that the candidates intended honestly to comply with the law, and meant to obey it, and that they themselves did no act contrary to the law, their desire and object being that the proceedings in reference to the election should be pure and honest, I will not unseat such persons upon the supposed act of an agent unless the act is established to my entire satisfaction.’ He says in another place:‡ ‘I think I am justified, when I am about to apply such a law, in requiring to be satisfied beyond all reasonable doubt that the act of bribery was done, and that unless the proof is strong and cogent—I should say very strong and very cogent—I ought not to affect the seat of an honest and well-intentioned man by the act of a third person. When I come to apply my mind to the evidence, I should require to see, in the first place, that there is agency; in the second place, I should require to be satisfied and certain that there could be no mistake with reference to the alleged act.’ Now, without expressing myself in equally strong terms with those used by the learned judge last quoted, I am at all events of

* Tamworth, 1 O. & H. 84.

† Wigan, 1 O. & H. 192.

‡ Westminster, 1 O. & H. 96.

opinion that the evidence of corrupt practice must establish affirmatively to the reasonable satisfaction of the judge that the acts complained of were done."

Costs.

As to costs, he said: "Some most unpleasant disclosures were made by witnesses called by the Petitioners as to the mode in which evidence had been collected in an improper way by three men, Phillips, Woolley, and Belham, and though the witnesses were some of them very unreliable, still the charges being broadly made, and no attempt being made to answer or explain them (neither of the three men I have mentioned nor Mr. Blake, the country solicitor, being called or even tendered for cross-examination), the impression left on my mind was a painful one. I have not, however, to try this issue, and the only bearing it can have on this inquiry is on the question of costs. Mr. Ellis, the London agent, appears not to have participated in the proceedings to which I refer. Mr. Blake, the country solicitor, is a very young man, but he is responsible for the conduct of the petition, and taking the whole matter into consideration, I am quite clear that there is, to say the least, nothing to take this case out of the usual rule, that costs follow the event.*

* The learned judge had said in his judgment, after summing up the Petitioner's evidence, that a strong *prima facie* case had been established; it is possible, therefore, that had it not been for the improper way in which part of the evidence had been collected, his decision as to costs would have been different.

CASE. XIV.

BOROUGH OF HACKNEY.

BEFORE MR. JUSTICE GROVE, APRIL 14, 1874.

Petitioner: Mr. Gill.

Respondents: Sir Charles Reed ; Mr. Holms.

Counsel for Petitioners: Mr. Patchett.

Agent: Mr. Sawtell.

Counsel for Respondents: Hon. E. Chandos Leigh ; Mr. C. Bowen.

Agents: Messrs. Wyatt and Hoskins.

Counsel for Returning Officer: Mr. Barnard.

The petition alleged,—

“ That the said election was holden on the 4th day of February, in the year of our Lord 1874, when Charles Reed and John Holms, and your Petitioner William John Gill were candidates, and that the Returning Officer made a return to the writ in the words and figures following, that is to say, ‘ On receipt of the within writ I gave all the notices required by the statute, and proceeded to the election in due course, according to law. Three candidates having been nominated, I then gave due notice of taking the poll, and appointed nineteen polling places. In consequence of the partial failure of the person who contracted to deliver the requisite ballot boxes, papers, stamps, and other materials, no poll was taken at two of the polling places, and in some others the polling was somewhat delayed. Subject to facts,

ELECTION PETITIONS.

I hereby certify that the members elected for the Borough of Hackney in pursuance of the within writ are :—

“ ‘ John Holms, of 19, Cornwall Gardens, Kensington,
Manufacturer, Charles Reed, of Earlesmead, Middlesex, Esq.

“ ‘ Dated this 6th day of February, 1874.

“ ‘ HENRY CHILD,

“ ‘ Returning Officer.’

“ That no poll was in fact taken at divers polling places in the said Borough at the said election.

“ That at divers other polling places in the said Borough the polling at the said election did not commence at eight o'clock of the forenoon, and continue and keep open during the day up to four of the clock in the afternoon, as by law required.

“ That by reason of the matters aforesaid, divers and many voters of the said Borough were prevented from voting at the said election.

“ And that by reason of the premises the said election was and is void.

“ Wherefore your Petitioner prays that it may be determined that the said election was void, and that the said John Holms and Charles Reed were not duly elected or returned, and that the costs of and incidental to the presentation of this petition, and to the proceedings consequent thereon, may be defrayed by the Respondents.”*

It was proved that the Borough contained about 41,000 electors, and for the purposes of the election it was divided into nineteen polling places, with an average of over 2,000 electors to each; that two polling places—namely, that at Church Road, Homerton, where 1,127 electors were entitled then and there

* A summons was taken out by the Respondents calling upon the Petitioner to show cause why this Petition should not be taken off the list, on the ground that the Petition was not a Petition within the meaning of the Parl. El. Act 1868, and did not disclose any facts which vitiate the return or give the Court jurisdiction. This summons was, after argument, dismissed.

only to vote, and at Percy Road, South Hackney, where 3,711 voters were similarly situated, were closed throughout the day, and that three other polling places—namely, Stamford Hill Ward, with 752 electors on the register; West Ward, 1,729 voters; and the De Beauvoir Ward, 1,455 voters—were only open for a part of the day. The result of this was that nearly 5,000 people were unable to vote, and a large number of other people were either prevented or might reasonably have supposed that they were prevented from voting. Mr. Holms received 6,968 votes, Sir Charles Reed 6,893, and Lieutenant Gill 6,310, thus giving Mr. Holms a majority over Lieutenant Gill of 658 votes, and Sir Charles Reed of 583.

Mr. *Bowen*, for the Respondents, submitted that the question for the Court to consider was whether the irregularity which had been proved to have occurred actually affected the result of the election, and prevented the real voice and choice of the majority of the constituency being heard and recorded. Would the Court set aside the election because a petitioner, who was not an elector, but a rival candidate, came forward and complained that a number of voters had been prevented by certain irregularities from giving their votes to his rivals?

Mr. Justice GROVE asked how he was to assume in what way the electors would have voted? Supposing in a constituency of over 1,000 electors 500 persons voted, and that it was alleged that the remainder who did not vote were Conservatives, and might, but for the circumstances, have turned the election, how could he tell the way in which they would vote, especially as under the Ballot Act every man's vote was held to be secret? Was it for him to determine whether certain persons by their promises, or otherwise, were Conservatives or Radicals? If so, there need be no further Parliamentary elections, as the parties would have only to go before a judge and state how many Conservatives and how many Liberals there were in their borough, and ask him to decide who should sit.

Mr. *Bowen* contended that it was open to him to prove that, had the polling-stations in question been opened, the result would in no way have been altered or affected. His clients, Mr. Holms

and Sir Charles Reed, represented what they believed to be an established Liberal majority in that constituency. He also called the attention of the Court to the 13th section of the Ballot Act, which provided that no election should be declared invalid by reason of a non-compliance with the rules contained in the first schedule to the Act, or any mistake in the use of the forms in the 2nd schedule to the Act, if it appeared to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in the body of the Act, and that such non-compliance or mistake did not affect the result of the election.

Mr. Justice GROVE pointed out that he, as the election judge, had two questions to decide—namely, whether the election was conducted in accordance with the principles of the Act, and whether the non-compliance with the rules had affected the result of the election. He thought that the real point was whether the constituency had had an opportunity of fairly recording their votes for the different candidates. It would be sailing uncommonly near the wind, and, as he thought, violating the spirit of the Act, to inquire how a voter would have voted had circumstances been different.

Mr. *Bowen* urged, in conclusion, that there had only been a breach of some of the directions contained in the first schedule to the Act, but not such a violation of the statute itself as would vitiate an election. He was instructed that if the electors had voted in the two places in question they would have enhanced largely the already considerable Liberal majority.

Mr. Justice GROVE asked how he was to settle, if 3,000 voters were produced on either side who had promised to vote for either the Liberal or the Conservative candidates, in what way they would really have voted on the polling day. The argument of Mr. *Bowen* was that the *onus probandi* that the irregularities in question really affected the result of the election, and that another candidate would have been chosen instead of one of the sitting members, if things had gone on regularly, rested with the Petitioner. If so, it would be practically calling upon the election judge to decide from their expressed opinions or promises, which by the Ballot Act they were entitled to break, how certain people would have voted.

Mr. Justice GROVE, in his judgment, declared the election void.

After stating the facts as above, he said as follows:—

“Mr. Bowen has, I think I may fairly say, said everything which could possibly be urged in support of the election, and has presented a most ingenious and able argument upon the words of the statute. Still he was bound to admit that if the irregularity was so great as to prevent the election being a true election, that could avoid it even at common law. I certainly should not here take advantage of any admission of counsel upon which to found my judgment, but I am perfectly certain, as far as my judgment goes, that an election which is conducted in such a way as (whether by accident or by design) not to afford to a very large mass of the electors an opportunity of voting, cannot be a true election of members. And, therefore, for a moment leaving the Ballot Act out of the question, it appears to me that there was no real election here which was in any sense a fair representation of the views of the electors of the Borough of Hackney. Then does the Ballot Act in any way alter that? The section of the Ballot Act on which Mr. Bowen relied was the 13th. He contended that no election may be declared invalid unless both the conditions named in the Act are fulfilled, that is to say, unless it appears ‘to the tribunal having cognizance of the question’ that the election was *not* ‘conducted in accordance with the principles laid down in the body of the Act,’ and also, ‘that such non-compliance or mistake’ affected ‘the result of the election’ in his sense, that, but for such mistake, another candidate would have been elected. I have turned the matter over in my mind, and I cannot see, assuming that argument to express the meaning of that section, how the tribunal can by possibility say that would or might have taken place under different circumstances. It seems to me to be a problem which the human mind has not yet been able to solve, namely, if things had been different at a certain period, what would have been the result of the concatenation of events upon that supposed change of circumstances. I am unable at all events to express an opinion upon what would have been the result, that is to say, who would have been elected provided certain matters had been complied with

Effect on election of irregularity as to opening polling stations.

here which were not complied with. It was contended that I might hear evidence on both sides as to how an elector thought he would have voted at such election. That might possibly induce a person not sitting judicially to form some sort of vague guess, but that would be far short of evidence which ought to satisfy the mind of a judge of what any individual who might express that opinion would really do under what might have been entirely changed circumstances. But, besides that, one of the principles of the Ballot Act is that voting should be secret, and voters are not to be compelled to disclose how they voted except upon a scrutiny after a vote has been declared invalid. Notwithstanding that, I am asked here, assuming the construction for which Mr. Bowen contends to be correct, to ascertain how either the 41,000 electors of this Borough, or any number of them, might have wished to vote had they had the opportunity of doing so, and what in that event would have been the result of the election. It seems to me that such an inquiry would not only have been entirely contrary to the spirit of the Act, but also that it would be a simple impossibility. I should, therefore, say that even if the wording of the Act, taking it literally and grammatically, required me to put such a construction upon it, it would lead to such a manifest absurdity (using now the judicial term which has generally been used with reference to the construction of statutes) that unless I were in some way imperatively obliged, and unless the Act could by no possibility admit of any other construction, I should not put a construction upon it which really reduced the matter to a practical impossibility. Such a construction would practically render it necessary, in the case of any miscarriage at an election, however great the miscarriage might be (if, that is to say, only a very small number of persons had voted, and all the rest of the Borough had been entirely unable to vote) that the judge should then enquire as to how the election would have gone. As I ventured to remark in the course of the argument, where a miscarriage of this sort took place it would be virtually placing the election not in the hands of the constituency, but in the hands of the election judge, who is not to exercise a judgment as to who is to be the member, but who is only to see whether the election has been properly conducted according to law.

Let us now see whether this 13th section does not fairly and reasonably admit of a different construction. The words of the section are, 'No election shall be declared invalid by reason of non-compliance with the rules . . . if it appears to the court . . . that the election was conducted in accordance with the *principles laid down in the body of the Act.*' No doubt it can be more difficult than for a judge or for a metaphysician or for anybody to say what are the principles of a statute which consists, together with the schedules, of upwards of 100 sections. One principle of the Act, as I have said, is doubtless that the voting should be secret, and when I look at the provisions for district polling places and polling stations, my impression is that another principle of the Act (which indeed must be a principle of all Acts for the representation of the people) is that the electors should have a fair opportunity of recording their votes. If that be not the principle of the Act one can hardly understand the Act being suitable for the purpose of recording the votes of those upon whom the Legislature has thought proper to confer the franchise. Then is it in accordance with the principles of the Act that a large proportion, amounting to several thousands of the electors, should be absolutely deprived of power of voting, and that a large indefinite number, which we cannot ascertain, should also have impediments presented to their voting, which may, and doubtless did, prevent a very considerable number of them from voting at all? Among the principles of the Act is one that there should be districts arranged for the convenience of the electors, at which they might have at the polling suitable machinery for giving their votes to the candidate to whom they chose at the last moment to give their vote. And as the Legislature has now reduced the time for polling to one day it is more important that there should be means fairly adapted to give to the electors the opportunity of voting with as little trouble as possible. When elections lasted a fortnight or more matters could be remedied, and if people could not vote on one day they might vote on another day; but now that it is reduced into one day, it is more important that there should be every opportunity for the voters to record their votes without unnecessary trouble. Can I say that it is in accordance with the

principles of this Act that such a large number of voters should be practically rendered unable to tender their votes? It therefore apparently rests with me to say, and I do say, that this election was not conducted in accordance with the principles laid down in the body of the Act.

“ The Act further says that the election is not to be declared invalid if it appears to the tribunal that ‘ such non-compliance or mistake did not affect the result of the election.’ I am by no means satisfied that in this case the non-compliance or mistake did not affect the result of the election. In saying that I am very strongly inclined to think that the expression ‘ the result of the election ’ does not in this Act necessarily mean the result as to another candidate having been elected at the poll. The result may be of various kinds. The result of the election would, in my judgment, be affected if, instead of a majority of 500, there was a majority of only ten, or even of 100. Upon a scrutiny the matter might be very different. Other causes might also produce a very considerable change of relation between the parties, and might have a very important effect upon the ultimate, if not upon the then present, representation in Parliament, that effect depending upon the magnitude of the majority. It will also be observed that the words used in the section are not, ‘ did not *alter* the result of the election,’ but, ‘ did not *affect* the result of the election.’ Does not the word ‘ affect ’ mean substantially ‘ bear upon the result ? ’ When fairly and substantially viewed by the tribunal having cognizance of law and fact, was what occurred reasonably calculated to affect that election? In my judgment it was. I myself cannot say, nor, as I have already remarked, so far as I am aware, can any human being say whether it altered or would have altered the result of the election if, instead of the number who were actually polled upon this occasion, the whole 41,000 electors had been polled. I see no reasonable possibility of fairly pronouncing an opinion upon the point, and, therefore, if I were required to construe the statute in that way (which I do not feel by any means obliged to do), I should say that it really demanded an impossibility, that it demanded of me to know, what no human being could know, that is to say, to know what would be the course of events under changed conditions and altered circumstances. I am here

give a fair rational construction to the Act. The leading words are, first, 'if it appears to the tribunal that the election was conducted in accordance with the principles laid down in the body of the Act' (and I am of opinion it was not so conducted), and secondly, 'that it did not affect the result of the election.' I cannot say that I am at all satisfied that it did not affect the result of the election, and in one sense I may say that I feel a strong opinion that it did more or less in a substantial degree affect the election, so that the result might have been changed had the whole of the electors been enabled to vote.

"If I look to the whole, and to the sense of it as a whole, it seems to me that the object of the Legislature in this provision is to say this—an election is not to be upset for an informality or for triviality, it is not to be upset because the clerk of one of the polling stations was five minutes too late, or because some of the polling papers were not delivered in a proper manner, or were not marked in a proper way. The objection must be something substantial, something calculated really to affect the result of the election. I think that that is a way of viewing it which is consistent with the terms of the section. So far as it seems to me, the reasonable and fair meaning of the section is to prevent an election from becoming void by trifling objections on the ground of an informality, because the judge has to look to the substance of the case to see whether the informality is of such a nature as to be fairly calculated in a reasonable mind to produce a substantial effect upon the election.

"That being my construction of the section, I cannot say, considering the very large number of electors who have been enabled from voting upon the present occasion, that it has been an election which may fairly be taken to represent the wishes of the electors of Hackney. Although no doubt it is a matter which one cannot view without some regret, that innocent parties who have expended time and trouble and money in the election should be put to this inconvenience, and that the election should now turn out to be a nullity, I cannot look at the consequences. I am here to pronounce the law to the best of my judgment, and in my judgment the law fairly applied, both at common law and according to this statute, is that the late election for the Borough of Hackney is void."

Costs.

As to costs, Mr. *Barnard* addressed the Court on behalf of Mr. Henry Child, the Returning Officer, who had been made a Respondent in the cause. He explained that a Returning Officer was an unpaid official, and received no remuneration whatever for his duties at an election. It was his simple task, as far as money matters were concerned, to obtain a deposit from each of the candidates wherewith to defray the cost of the poll, and having done so to return the balance, if any, to them. Mr. Child had been the Returning Officer for the district for no less than thirty-five years, and at no previous election, during the whole of that period, had any mishap occurred. He had always employed the same contractor for stationery and the materials for polling. Under the Ballot Act only three days were allowed to provide everything necessary for the election, and that, he thought, hardly afforded sufficient time for the enormous amount of work which had to be done. In this instance the day of nomination was the 30th of January, and, a poll being demanded, the Returning Officer, acting for the time as the agent of the candidates, received 400*l.* from each of them as a deposit for the purpose of providing the materials for the polling. Orders were immediately given for the preparation of the necessary ballot papers (numbering no less than 41,000, and each bearing a distinctive mark and number), ballot boxes, stamps, and, in fact, everything necessary for the election. Polling booths and stations were constructed, presiding officers and clerks were appointed, and all was in readiness. The Returning Officer and his son and partner made frequent inquiries at the printer's if all was going on smoothly, and it was arranged by them that the ballot boxes and papers should be delivered at each station on the night before the polling-day, and left in charge of a responsible person until the time arrived for opening the booths. Notwithstanding all these precautions, the printer (a Mr. Collier) failed to carry out his contract, and it was this which had caused the *fiasco*. He urged, in conclusion, that the Returning Officer, who was, he repeated, an unpaid official, was in no sense an insurer, that he had used due diligence and every reasonable precaution to conduct the election successfully, and that it would be hard and unjust, under the circumstances, to mulct him in the costs of the petition, especially as he had suffered already by being superseded in his appointment.

Mr. Justice GROVE, in his judgment, said as follows :—

“I should have had no difficulty on that matter in this case provided that there had been only the Petitioner and the sitting members, for I think that both Petitioner and members are so perfectly exempt from blame in the matter that, although they must incur expenses in reference to this petition, still of all cases that have yet been decided this is certainly a case in which neither of the parties should be called upon to pay the costs of the other. But a third question intervenes—namely, by whose fault has this been occasioned? If I clearly saw my way to a jurisdiction in this matter I might have pronounced an opinion upon that question, but having considered the words of the statute,* I am by no means clear that I have such a jurisdiction as would bear upon that particular matter, and, besides, I am by no means sure that if I had such a jurisdiction, and were to exercise it, I might not perhaps wrong one or other of the parties by prejudicing a remedy to which they may conceive they are entitled. In saying this, I must not be taken as expressing any opinion as to whether they have a remedy or not, or whether they ought to have one. Upon the whole I think that the best decision I can come to with regard to costs in this matter is, without expressing any opinion upon the responsibility of the Returning Officer or upon what his liability is (for I think it is always desirable for a judge to do as little as he can in the way of expressing extra-judicial opinions), to make no order as to costs.”

* Parl. El. Act, 1868, §§ 41, 51.

CASE XV.
BOROUGH OF WINDSOR.

BEFORE MR. BARON BRAMWELL, APRIL 21, 1874.

Petitioners: Herbert and another.

Respondent: Mr. Richardson Gardner.

Counsel for Petitioners: Mr. Murphy, Q.C.; Mr. Biron; Mr. Nash.

Agent: Mr. Darvill.

Counsel for Respondent: Mr. Giffard, Q.C.; Mr. Julian Robins.

Agent: Mr. C. T. Phillips.

THE petition contained the usual allegations of corrupt practices, but did not pray the seat.

Evidence was given in support of the charge of bribery by agent, but the agency of the briber was not established. In support of the charge of intimidation it was proved that the Respondent had evicted a number of tenants after the election of 1868 because they had voted against him, but it was not proved that this conduct on his part, although, as the judge observed, it was very reprehensible, did as a fact unduly influence any voters at the last election, consequently it could not be considered as a corrupt practice within the meaning of the Corrupt Practices Prevention Act 1854, so as to avoid the last election.

In the course of the case,

It was proved that one Pantling wrote a letter to a voter named Juniper, who at the time of the election was away from

borough, offering to pay his travelling expenses if he would be elected and vote; and it was admitted that this offer, if made by the Respondent or an agent of his, would have unseated him. The only evidence of Pantling being an agent was that he was a member of a committee which had been formed for the purpose of promoting the Respondent's election. It was not proved who appointed him on the committee, or how he got there, what his duties were, or what he did; but his own statement as to this was that he understood that his duties were to do the best he could for the Respondent.

A member of a political committee not necessarily an agent.

Mr. Baron BRAMWELL, in his judgment, said as to this:—"I am invited to believe that in some way or other a man who has no description of himself, except that he was on a committee, was an agent, so that his act in writing this letter should unseat the Respondent. It appears to me really impossible to hold that he was an agent. I think that according to the authorities,* and according to the good sense of the matter, he was not an agent. He has given us no account of how he came to deliver this letter to Juniper, he having told him where he had to go and having told him to write upon the occasion of an election. I cannot help agreeing with Mr. Giffard that if we were to hold this man to be an agent it would make the law of agency applicable to candidates positively hateful and ludicrous."

It was proved that the Respondent, some long time before the election, gave away about £100 among his tenants, some of whom were voters and some not, and who paid him altogether about £3000 a year in rent. This money was spent in coals, beef, and tea, and the Respondent, on being asked whether, when he made these gifts, he had in view the election for the borough, admitted that to a certain extent he had. It was then argued that the gift of this money was a corrupt act, on account of which the Respondent should be unseated.

Colourable charity.†

Staleybridge, vol. i. 67; Westminster, *ib.* 92; Blackburn, *ib.* 200; Bolton, *ib.* 272; Taunton, *ib.* 183; Wigan, *ib.* 189; Galway, vol. ii. 53. See also Newry, P. & K. 151; Bristol, P. & K. 574.

It was similarly decided by Willes, J., Windsor, vol. i. 2, and per Curiam, J., in Youghal case, *ib.* 294. See also Hastings, *ib.* 218.

Mr. Baron BRAMWELL, in his judgment, said as to this :—" It is certain that the coming election must have been present to his mind when he gave away these things. But there is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done on account of the existence of this motive, which by itself would have been an illegitimate motive. If the Respondent had not been an intending candidate for the borough, and yet had done as he has done in respect of these gifts, there would have been nothing illegal in what he did, and the fact that he did intend to represent Windsor and thought good would be done to him and that he would gain popularity by this does not make that corrupt which otherwise would not be corrupt at all.

Admissibility
of evidence
as to acts of
intimidation at
a previous
election.

(2) 3.

James West was asked by Mr. Murphy for the Petitioners:—

Q. Were you a tenant under the Respondent at the time of the election of 1868 ?

A. Yes.

Q. Were you canvassed by him ?

A. Yes.

Q. What occurred between you and him when he canvassed you for the election of 1868 ?

Mr. *Giffard*, for the Respondent, objected to the question as irrelevant to the present issue. He submitted that the Court was not trying what took place at the election of 1868.

Mr. *Murphy* :—" It is relevant to this issue, because it shows that the Respondent, by means of terror, endeavoured to prevent any of his tenants from voting against him at any future election. The mischief is not confined to an individual, because terror is struck among all placed in a similar position." He referred to the judgment of Mr. Justice Willes in the Blackburn case.*

Mr. *Giffard* :—" Then this is an act of intimidation, according to my learned friend, the effect of which may continue for all time."

Mr. *Murphy* :—" I think it is."

* Vol. i. 204.

Mr. Baron BRAMWELL :—" Mr. Murphy says he dismissed a number of people and established a reign of terror, and did the act before the eyes of those who remained. I do not think I can reject this evidence."

It was then proved that shortly after the election in 1868 the Respondent turned out a number of persons who were his tenants because they had voted against him at that election.

It was argued that this conduct on the part of the Respondent with regard to the election in 1868 had the effect of intimidating the tenants at the present election, and in fact amounted to undue influence within the meaning of the Corrupt Practices Prevention Act, 1854, s. 4.

Mr. Baron BRAMWELL, in his judgment, said as to this :—" There is no doubt that those men were turned out after the election of 1868 because they obeyed the dictates of their consciences, and voted accordingly. I find that fact against the Respondent, and if it were enough to unseat him I would do so gladly; but I do not think it is. It is not the way in which those men were treated after the election in 1868 that affects the case, but the question is whether the treatment operated on the minds of others at the subsequent election. Practically a threat was held out that if the new tenants on a future occasion exercised their franchise against the Respondent, they would be turned out also. To my mind it was a threat, and could I but have found that that threat had been in operation at the time of this election, I should have said that, although the threat was made in 1869, still it was a threat to influence the voters at this election, and that it was a corrupt practice. To my mind a threat must be an operative threat at the time of the election, and if it were a bribe it must be an operative bribe at the time of the election. An offence might be committed, although the bribe were not operative at that time. Supposing it were known that there would be a dissolution of Parliament, and the Respondent threatened that if his tenants did not vote for him he would turn them out, that would be a threat at the time of the election. That is an extreme case to show that the threat need not be made at the very time the election is going on. On the other hand, one may put a case to show that it must be a threat or bribe

Effect of act of intimidation committed before the election must be shown to be continuing at the time of election.

ELECTION PETITIONS.

continuing in operation. Supposing, for instance, a man were bribed to vote at an election, and died five years after he had been bribed, and then ~~after his death~~ the election took place, is it ~~unreasonable~~ that ~~the election could~~ be avoided on account of that ~~bribe~~? It cannot be. Supposing next, that a man was bribed ~~to vote at an election~~, but before ~~the~~ election took place, both ~~the voter and~~ the voter repented, and the voter returned the ~~money~~. Would that be bribery at ~~the~~ election? I think not. ~~And~~ you can show that the bribery or threat is one the ~~case~~ of which is in existence, continuing till the time of the ~~election~~, although the bribe or threat ~~which~~ has been given or ~~made~~ may have subjected the parties to penalties, it is not a ~~bribe or threat~~ which will avoid the election. Assuming as I do, ~~that~~ these tenants were threatened at the time of the evictions, and assuming that some of them continued to be voters at the ~~time~~ of the last election, I think the effect of the Ballot Act, combined with the non-enforcement of the promise (if I may use ~~such~~ an expression) by the Respondent, had the effect of preventing the threat being one operative at the time of the last election. I think so because the effect of the Ballot Act is that a man can vote with safety according to his conscience, and the threat can have no operation upon him unless you suppose he is going to be asked afterwards how he voted. But if it had been intended that the threat should be continued operative, what would have been the way in which it would have been done? Suppose a plain case, which is not very likely, because it would be fatal to do it. Suppose the Respondent had gone to the tenants and said, 'Do you remember those voting against me the last time were turned out?' 'Yes I do, very well.' 'Unless you promise me you will vote for me you will be turned out.' I think that would be a threat, and a continuance of the old threat. And I think if any equivalent conduct had taken place, I think if he had not exacted a promise that he should vote for him, but had said, 'I want you to promise me,' any man would know what that meant. 'Or I go, if I don't vote for you,' that would be a continuance of the old threat, because, although he might have gone and broken his word, yet a man, having promised, might have felt himself bound to vote, and then would have been voting

under the influence of the threat. I do not know whether that is too recondite a consideration ; if ever a case should arise, possibly it may be that those who decide it may take a different view from the one I suggest. But what I have to decide is, Has a corrupt practice been made out at this election ? and I am compelled to say that a case of corrupt practice by an undue influence has not been made out."

Mr. Baron BRAMWELL, in his judgment, declared the Respondent duly elected.

As to costs, he said as follows :—" Although I have come to ^{Costs.} the conclusion that a case of corrupt practice by undue influence has not been made out,* it must not be supposed for a moment that I hold the Respondent blameless. I never wish to go out of my way. I have been too long upon the bench to take any pleasure in scolding people, but with reference to the decision I have come to upon this part of the case, I think it right to say that the conduct of the Respondent ought to be severely condemned. Turning out those men in the way he has, he has acted as no just man and no gentleman would have acted ; and I am surprised that any one should try to get into Parliament by such means. I find no fault with a man trying to become a person of influence in a borough by acquiring property. He may say, ' If I become the owner of such a quantity of property and come in contact with a great number of people, who find I behave myself properly in my dealings with them, they will think I am a proper person to be returned to Parliament,' I think that is a legitimate mode of influence. And I go further. If there is a choice between two tenants, and one agrees with him in politics and the other does not, I do not think it wrong if he takes the tenant who agrees with him. But that a man should not only do that, but that he should endeavour to coerce their opinions and make them give up their rights, contrary to their inclinations, is, I think, most mischievous. I should not, however, have said this, if it had not a most important bearing upon the only remaining matter that I have now to dispose of, and that is the costs. I certainly think the Respondent has brought upon himself this inquiry ; and therefore, though I feel bound to declare he is duly elected, I shall leave him to pay his own costs."

* As to this see above, p. 91.

CASE XVI.
BOROUGH OF PETERSFIELD.
BEFORE MR. JUSTICE MELLOR, APRIL 21, 1874.

Petitioner: Henry J. D. Stowe.

Respondent: Hon. S. H. Jolliffe.

Counsel for Petitioner: Mr. Serjeant Ballantine ; Mr. J. O. Griffiths ;
Mr. C. Bowen.

Agents: Messrs. Soames.

Counsel for Respondent: Hon. A. Thesiger, Q.C. ; Mr. W. G. Harrison ;
Mr. Couch.

Agents: Messrs. Rogerson and Ford.

THE petition contained the usual allegations of corrupt practices. It also alleged that many persons voted for the Respondent who were disqualified from voting, or not qualified to be upon the register or to vote, and that consequently the majority of the voters for the Respondent was only an apparent and colourable majority over the unsuccessful candidate, William Nicholson; and it prayed the seat for William Nicholson.

In the course of the case,

What is sufficient evidence of a threat of eviction.

It was proved that twelve years before the election Mr. Carter had let a cottage to one Goold (who was not at the time a voter) on the condition that if ever there should be an election, and the Respondent's party wanted a vote, Goold would give his vote for the Respondent's party. Goold had been waiting three years for

cottage, and it was a great advantage to him to get it. A few days before the poll the Respondent and Carter called at Goold's house, and asked Goold's wife whether her husband would vote for the Respondent. Upon Mrs. Goold hesitating to promise a vote, Carter said, "I think it was named to your husband when he took the house. Mrs. Goold then answered, "I have no doubt but what he will."

Mr. Justice MELLOR, in his judgment, said as to this case as follows:—"I confess that if this had been a recent letting, and if it had been a condition that the tenant should vote as the landlord dictated, and then the landlord's agent, in the presence of the sitting member, had referred to the condition in canvassing the tenant, I should have been very slow indeed to decide that that might not be a case of undue influence. But must take all the circumstances together. Twelve years ago Carter let this house to Goold as a monthly tenant at 1s. 6d. a week. It is evident (and I cannot shut this out from my mind) that it was an advantage to Goold to have the house; he said he had been waiting three years for the opportunity of getting the house, and therefore he got something which he desired to have. Would I have come to the conclusion which my brother Ballantine testifies me to come to, that there was any semblance of a threat in what passed in the presence of the Respondent, I should certainly not have held that it was undue influence sufficient to unseat the Respondent."

At the conclusion of the evidence given in support of the allegations of corrupt practices,

Mr. Justice MELLOR delivered judgment as to these allegations, and stated that in his opinion nothing had been proved which would unseat the Respondent's seat.

Before the scrutiny was commenced,

Mr. Serjeant *Ballantine*, for the Petitioner, submitted that the case had now arrived when the recriminatory case should be heard and decided.

Mr. A. *Thesiger*, for the Respondent, then stated that the charges of corrupt practices against the Respondent having failed,

he did not propose to proceed with the counter-charges against the Petitioner.

The scrutiny was then gone into.

Mr. *Griffiths*, for the Petitioners, said that he would commence with the class of voters who were alleged to have received parochial relief subsequently to July 31, 1873, the date of the last registration.

Hon. A. *Thesiger*, for the Respondents, submitted that by s. 7 of the Ballot Act the register was made conclusive; it was not clear, therefore, that receipt of parochial relief by a person whose name was on the register, would disqualify him from voting.

Mr. Justice MELLOR stated that if necessary he would reserve the point for the Court of Common Pleas.*

Mr. Serjeant *Ballantine* asked his Lordship to reserve also, if necessary, the case of certain voters receiving alms under the will of a person deceased.

Mr. Justice MELLOR agreed to do so.

Receipt of
parish relief,
how proved.

The vote of John Fortescue was objected to on the ground that he had received parish relief.

The parish doctor, on being called, stated that in December, 1873, he attended the children of John Fortescue, although he had received no special order from the relieving officer to do so. He was frequently in the habit of attending persons whom he knew to be entitled to parish relief without having previously received any special order from the guardians.

Mr. *Thesiger*, for the Respondent, submitted that, as the medical attendance in this case had been obtained without an order previously from the relieving officer, this case did not come within the statute.†

Mr. Justice MELLOR stated that in his opinion it is sufficient if it was proved that the patient had been attended by the parish doctor as a pauper patient, a return of his attendance having been

* See the decision of the Court, *Stowe v. Jolliffe*, L. R. 9, C. P. 734.

† 2 Will. IV. c. 45, s. 36.

wards made to and ratified by the guardians, and that the production of an order from the relieving officer given previous to the attendance was not essential, although desirable.

The vote of John Fortescue was then examined, and struck off.

The vote of Henry Powell was objected to on the ground that was not an occupier, but merely a servant.

Occupation by
servant when
colourable
only.

It was proved that Powell was paid 16s. a week wages, from which a shilling a week was deducted for rent of the house he lived in. His duty was to look after the cattle on the farm, but as he could not do unless he lived in this house.

Mr. *Thesiger*, for the Respondent, submitted that in this case there was a relation of landlord and tenant created.

Mr. Justice MELLOR said that this case was just upon the dividing line, but upon the whole he should sustain the vote.

In the next case of George Blunding, the facts were similar to those in the last case, except that the voter received 13s. a week wages, and there was no express stipulation about any deduction from his wages for rent.

Mr. Justice MELLOR held that this was not a good vote.

In the next case of Thomas Aylward, it appeared that the cottage in which he lived belonged to his master, and that 6s. a month was deducted from his wages by way of rent. His master, when being called, stated that Aylward was a weekly servant, with a cottage by the month—that is to say, he would be entitled to stay in his cottage one month after leaving, but the cottage was merely an appendage upon the labour, and was there merely for the convenience of the farm. He was asked, “Should you take any one into it who was not a servant of yours?”

A. Certainly not.

Q. And he is not free to leave your service, and remain in the cottage?

A. Certainly not.

Mr. Justice MELLOR, after an adjournment, said as follows as to these votes:—“I have come to the conclusion that I was a little hasty in allowing the one vote that I did allow, but as that

is allowed I shall not reopen it. I think the guiding principle in all these cases is, 'Is the house auxiliary to the service?' I do not mean to say that that is decisive, because in each of these cases, as far as I can see, it is always a question of fact, and whenever a decision is come to by the Court upon a case stated by a revising barrister, it is generally ended in this way, that 'the revising barrister has so stated the case that the Court cannot see that he was wrong, but they rarely lay down anything that can be taken as an affirmative guide. I think the distinction between the two cases may be shown by cases which exist in Lancashire and Derbyshire, where there are usually attached to a mill forty or fifty houses, and the owners require that all persons who get work at the mill shall occupy these houses, provided there is a house vacant; if there is not, they let them live anywhere else. In that case it is not auxiliary to the service, but the landlord requires it for his own profit and convenience, because having the security of the man's work for his rent, he lets him the house, say at 2s. a week, and he requires the man to take the house if there is one vacant, but if there is not, the man lives elsewhere. It is, therefore, not auxiliary to the employment, but an independent occupation. In all these cases the rating is not the actual test; the occupier may be rated or not; he may bargain with his landlord, and let him pay the rate, and yet the tenant may be entitled to his vote quite independently of the rating. So it may be that a certain sum per week may be cut off from what would otherwise be wages in respect of the occupation of a house. But if the bargain is this, 'You shall have 15s. a week and the use of the house,' then I am satisfied that it is in the occupation of the employer, and that it is not an independent tenancy. Just as in the case of a gamekeeper, who occupies a house in the centre of a gentleman's preserves, and has so much a week and a house to live in, the house is not the keeper's as a tenant, but he occupies it for the purpose of discharging his duties as gamekeeper to the gentleman. So also with regard to a gardener; and there are many other instances of the same kind. Therefore, that being so, I am disposed to think that this vote (of Aylward's) must go. I do not mean to say that there may not be an agreement between a master and a servant as to the occu-

tion of a house belonging to the master, I am only saying that is the presumption of fact which I must arrive at upon the evidence as to this particular case. I do not at all mean to say that the relation of master and servant may not coexist with an dependent occupation."

At the conclusion of the scrutiny,

Mr. Justice MELLOR said: "I understand that the learned Counsel on either side will frame a case for my approval, to be submitted to the Court of Common Pleas, and if there is any difference they must come before me. My labours, therefore, are now all terminated except with regard to the question of costs."

Mr. Serjeant *Ballantine* called attention to the fact that a recriminatory case had been put upon the record, and subsequently withdrawn.

Mr. Justice MELLOR: "I have considered that point, and I think the Petitioner must pay the costs of the petition as far as the general allegations of corrupt practices are concerned. The costs of the scrutiny must abide the event of the decision of the Court of Common Pleas. As to the recriminatory case, the rule of all the judges is, that, whatever may have been in the pleadings, the costs ought to follow the decision upon the merits of the case. We cannot enter into a nice discussion as to dividing the costs further than that, if it should turn out to be a double turn (I do not suppose it will), then I should think that each party ought to pay his own costs."

CASE XVII.

BOROUGH OF WAKEFIELD.

BEFORE MR. JUSTICE GROVE, APRIL 21, 1874.

Petitioners: Messrs. Lee and Briggs.

Respondent: Mr. E. Green.

Counsel for Petitioners: Mr. Hawkins, Q.C.; Hon. E. Chandos Leigh.

Agents: Messrs. Van Sandan and Cumming.

Counsel for Respondents: Mr. Charles Russell, Q.C.; Mr. Forbes.

Agents: Messrs. Fernandez and Gill.

THE petition contained the usual allegations of bribery and treating, but did not pray the seat.

By the evidence adduced a number of cases of bribery by agent were clearly established.

Mr. Justice GROVE, in his judgment, declared the election void on the ground of bribery by agent.

Credibility of
evidence given
by bribed
persons.

As to the value of the evidence given by persons who allege that they have been bribed, he said:—"It is perfectly true that where witnesses are called to prove that they themselves were bribed, their testimony is open to suspicion, varying in degree with the circumstances under which that testimony is given, and its effect upon the judge must depend a good deal upon the demeanour of the witnesses, and to such circumstances as may transpire to lead to any fair or well-founded opinion as to whether, although they are tainted with the necessary admission

they have been guilty of improper practices, they are so
ed that their evidence is to be disbelieved altogether, or
her what I may call the circumstantial value of their evidence
ch that they may be believed, although they do not come
rd in a reputable character. There are no infallible rules
e laid down upon such a matter as this, and very slight
ences may turn the scale and influence the mind of the
nal, as to whether the witness is to be believed or not. The
er to one or two questions, the mode of the answer, the
vation as to whether there is anything evasive, or whether
witness fairly makes what is commonly called a clean breast
in an honest and straightforward way; all these are matters
onsideration by the tribunal. Independently of this there
also the sources from which the evidence comes, as, for
nce, supposing that three or four witnesses come from
may be considered a prejudiced source, indicating something
e nature of a conspiracy, or that on the other hand they
e from such a variety of different sources that it is not likely
ould not be reasonable to presume that they had all been
ced, without any apparent reason, or without any single
ominating motive, to come and tell a series of falsehoods.
hese circumstances and a vast number of others have to be
ed at, some of them so delicate and difficult of appreciation
they hardly admit of being described in words as to their
t upon the mind of a judge who tries a case of this
ription.

The reason why I rather dwell upon this matter is, that the
ic should know that these petitions are being tried by men,
judges of this country, who have generally as barristers had
g experience in dealing with evidence in courts of justice,
therefore people will very much delude themselves if they
ose that by keeping within some particular dicta or expres-
s of the learned judges they can creep out of the difficulty,
h is virtually a difficulty of conflict of intellect. Corruption
try to beat the law, but generally speaking, and in the long
I think I may say universally, the law will end in defeating
ption; because so long as society can hold together in a

civilized state, it has and always will have on its side the strongest, the most honest, and the most penetrating minds. Therefore with whatever impunity people may think that they can perpetrate corrupt practices by avoiding as they suppose the difficulties which have been fallen into in other cases, they will probably make a very great mistake, because they will find at each new inquiry means of getting at the truth which they little thought of when they were measuring the new inquiry by the past."

As to agency, he said :—

Evidence sufficient to establish case of agency.

"It was proved that the Respondent was vice-president of a certain society, that he spoke at meetings of that society, that many of the members of that society were to his knowledge active partisans of his, and were actively canvassing for him, that there were certain rooms belonging to this society, which might in one sense be called committee-rooms, but which were not committee-rooms in the old sense of being occupied by a certain fixed committee. These rooms were placarded with the Respondent's name, and at them business in connection with the election was transacted. These facts would *prima facie* bring the case within the law of agency, and would be sufficient to satisfy a tribunal that the Respondent had put himself, or allowed himself to be in the hands of certain persons, or had made common cause with them so as to make himself liable if they, for the purpose of promoting his election, committed acts of bribery. In saying this there is not the slightest personal imputation upon the Respondent. By election law the doctrine of agency is carried further than in other cases. By the ordinary law of agency a person is not responsible for the acts of those whom he has not authorised, or even for acts done beyond the scope of the agent's authority. If a man gives another person authority to buy a horse for him he is responsible for the acts of that person in that transaction, if he gives him a general authority to act in his business for him he is responsible for all his agents' acts, but he is not responsible for the acts which his alleged agents choose to do on their own behalf. But if that construction of agency were put upon acts done at elections, it would be almost im-

possible to prevent corruption. Accordingly a wider scope has been given to the term 'agency' in election matters, and a candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote an election, provided that the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object. I think it well that I should say in this respect that it is almost impossible for any judge to lay down such exact definitions and limits as shall meet every particular case, and it is extremely important that the public should know that, because, were it otherwise, were I for instance on the present occasion to attempt to lay down an exact definition of what constituted agency at an election, possibly in some other case that particular definition might be evaded, although what came to substantially the same thing might have taken place. Happily there is sufficient elasticity in the law to prevent that being the case; and here we find those who think that they can evade the law by just picking out of the words which learned judges use, or even which tribunals use, upon a matter of this sort, which is partly law and partly fact, will generally find that they are very much mistaken. It is therefore well that it should be understood that it is not with the judge, not misapplying or straining the law, but in applying the principles of the law to changed states of facts, to form his opinion as to whether there has or has not been what constitutes agency in these election matters. It is well that the public should know that they cannot evade the difficulty by merely playing, as they suppose, out of the technical meaning of certain words and phrases."

As to the nature of the inquiry he said:—

Under the Parliamentary Election Act, 1868 powers are given to a judge which may be exceedingly useful for the purpose of aiding inquiries of this sort, but it appears to me to be perfectly impossible that a judge can take upon himself to inquire into the conduct of a whole constituency, or call witnesses before him and test them as if he were an adverse counsel testing their evidence by cross-examination, because he has not materials for doing so,

Nature of the
inquiry and
duties of the
judge.

and because it would be entirely a non-judicial proceeding. It appears to me that the powers given to the judge by this Act are rather in aid of the truth of this inquiry, and I cannot see that he can institute or carry out an inquiry himself."

Costs.

Costs followed the event.

CASE XVIII.

BOROUGH OF BARNSTAPLE.

BEFORE MR. JUSTICE MELLOR, APRIL 27, 1874.

Petitioners: Messrs. Fleming and Holt.

Respondents: Mr. T. Cave ; Mr. S. D. Waddy.

Counsel for Petitioners: Mr. W. G. Harrison ; Mr. Collins.

Agents: Messrs. Stevens, Wilkinson, and Harries.

Counsel for Respondents: Mr. Serjeant Parry ; Mr. Tennant.

Agents: Messrs. Wyatt, Hoskins, and Hooker.

THE petitions contained the usual allegations of corrupt practices, but did not pray the seat.

The evidence adduced by the Petitioners was insufficient to establish a case.

Mr. Justice MELLOR, in his judgment, declared both the Respondents duly elected.

As to the law of agency, he said as follows :—

“ I quite think the election law is a cruel and somewhat **hard** law,* yet it is too well settled for an election judge to act **contrary** to it. I say that if an agent, although he may be no **agent** to the candidate, be employed by the agent of a candidate, **he is** a sort of subordinate agent, and if he is employed by **persons** who have authority to employ people to further the **election** of a particular individual, and in the course of canvassing **makes** use of a threat or a promise, such an act will make the

Liability of candidate for acts of persons employed by agent.

* See a similar remark of Keating, J., in Norwich case, ante, p. 41, and per **Martin**, B., Westminster, vol. i. 95.

candidate liable, however innocent the candidate may be, or however careful the candidate may have been to avoid such conduct.* As Mr. Harrison very fairly puts it, he cannot take the benefit of the services of the individual and repudiate them at the same time. But the judge must be satisfied that the man, when he was acting, was acting as the agent for furthering the election of a particular candidate. This, as my brother BLACKBURN has stated it,† must be a question of more or less—it must depend upon the actual belief of the judge.”

As to the effect of properly conducting an election, he said:—

Effect of properly conducting an election.

“Looking at the mode in which this election appears to have been conducted generally, and the small expenditure incurred, I am induced to adopt the dictum‡ of my brother MARTIN, and to say that where it is evident that it was intended that an election should be honestly conducted, and where the expenditure shows that the parties contemplated only that which was honest and legitimate, I should require very conclusive evidence to induce me to declare it void.”

As to costs, he said:—

Costs.

“Upon the question of costs I hold a very strong opinion. I cannot balance how much ground may have presented itself to the minds of the persons who are Petitioners, unless there be some manifestly flagrant act upon the part of the sitting members which was calculated to lead them into a petition, although ultimately it might turn out to be unsuccessful. There are cases, but they are very few (one was mentioned by my late brother WILLES in a judgment of his,§ and my brother BRAMWELL the other day|| acted much upon the same principle), in which each party has had to pay their own costs. But in this case I can see nothing to take it out of the general rule, and my determination therefore is that the Petitioners must pay the expenses of this inquiry.”

* See similar remarks of Blackburn, J., in *Bewdley case*, vol. i. 18, and *Staleybridge case*, vol. i. 69.

† *Staleybridge*, vol. i. 70.

‡ *Wigan*, vol. i. 192, cited by Grove, J., *Taunton*, ante, p. 75.

§ *Semble*, *Guildford*, vol. i. 15.

|| *Windsor case*, ante, p. 93.

CASE XIX.
BOROUGH OF STROUD

BEFORE MR. BARON BRAMWELL, APRIL 28, 1874.

Petitioners: Baynes and others.

Respondents: Mr. Stanton and Mr. Dickinson.

Counsel for Petitioners: Mr. Serjeant Ballantine ; Mr. Giffard, Q.C. ;
Mr. A. L. Smith.

Agents: Messrs. White and Sons.

Counsel for Respondents: Mr. Hawkins, Q.C. ; Hon. E. Chandos Leigh ;
Mr. Anstie.

Agents: Messrs. Waterhouse and Winterbotham.

THE petition contained the usual allegations of bribery and treating, but did not pray the seat.

It was proved that corrupt treating had been committed by several persons who were undeniably agents of the Respondents, and the Respondents thereupon declined further to uphold the validity of the election.

In the course of the case,

It was proved by the evidence of his brother Williams that one Edward Stephens had disappeared shortly after the election. It was alleged by the Petitioners that Edward Stephens had bribed several voters, and his brother William was asked questions with a view to show that he knew from what Edward had said to him that he had committed the alleged bribery.

Admissibility
of evidence as
to bribery by
person who
has absconded.

Mr. Hawkins, for the Respondents, objected to William Stephens being asked such questions as these.

Mr. Baron BRAMWELL : “ I would rather receive the evidence, and I will undertake to say that it shall not unduly bias me if it is not to be acted upon. If there is no better evidence of this alleged bribery than that he had said to his brother, ‘ I have bribed so and so,’ I should not act upon it.”

Adjournment
of the Court in
order that a
witness may be
compelled to
attend.

Subsequently the father of Edward Stephens was called, and admitted that he knew his whereabouts, whereupon

Mr. Baron BRAMWELL said : “ It is absurd to suppose that any Court would allow justice to be trifled with by the continued absence of witnesses. I would adjourn for six months if it were necessary for this witness to be called here.”

Duties of the
judge judicial
not in-
quisitorial.

Stephens and the other witnesses did not appear at all, but at the close of the case, after the Respondents had declined to contest the seat any further, and before delivering judgment,

Mr. Baron BRAMWELL said further as to this : “ I have been wondering whether I ought to compel the attendance of Stephens and the other men, or to order it—I will not say compel it. The statute * says ‘ compel.’ There is not the least proof against any of them at present, and therefore I appeal to you, brother Ballantine, and Mr. Hawkins, to assist me, as the case is really over. I rather think that the meaning of this statute is, not that the judge should compel the attendance of any person with a view to the report he may make to the Speaker, but with a view to the true decision of the question between the Petitioner and the Respondent. If so it is not necessary to compel the attendance of these people, as that would be attended with this extreme inconvenience, that I should have to adjourn the Court for a week.”

* Parl. El. Act, 1868, s. 32, is as follows :—“ On the trial of an election petition under this Act the judge may, by order under his hand, *compel* the attendance of any person as a witness who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order shall be guilty of contempt of court. The judge may examine any witness so compelled to attend, or any person in court, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by a judge, such witness may be cross-examined by or on behalf of the Petitioner and Respondent, or either of them.”

Mr. Hawkins : “ *Mr. Justice Grove*, at Wakefield,* stated that he thought it was no part of his duty to compel the attendance of witnesses, or to be sending for witnesses, or acting in an inquisitorial manner.”

Mr. Baron BRAMWELL : “ It is evident that I need not compel it on behalf of either party, because the statute says, ‘after the examination of witnesses aforesaid by the judge, such witnesses may be cross-examined by or on behalf of the Petitioners and Respondents or either of them.’ Therefore, the judge for his own views and objects, compels the attendance.”

Mr. Hawkins : “ At Wakefield, after witnesses had been called to disprove some of the acts of bribery alleged, one of the persons who was alleged to have bribed was called to contradict five or six witnesses, and he swore he did not bribe them. I submitted it was no part of my duty, inasmuch as the object of the petition was gained (the judge had already decided that the election was void) to be cross-examining witnesses for the mere purpose of discussing a question which was not material to the case before the judge ; and the learned judge intimated that I was adopting the proper course, and he said as follows : ‘ It is no part of my duty to be investigating isolated cases ; if the Legislature should think fit to direct inquiry they can do so, and there will be proper parties appointed to do it, but such an inquiry is not to be held at the expense either of the Petitioner or the Respondent. The object of the petition being gained, there is an end of the inquiry as far as the parties are concerned.’ I therefore abstained from cross-examining the witnesses.”

Mr. Giffard : “ I am able to assist your Lordship with a case in point. *Mr. Justice Willes*, in the Windsor case,† made exactly the same observations—namely, that his duties were judicial, not inquisitorial ; and if the judicial issue was determined by evidence before him, it was no part of his duty to enter into an inquiry as to the state of the borough.”

Mr. Baron BRAMWELL : “ You could not name a greater authority. That is my own notion too.”

Mr. Hawkins : “ The Petitioners will have a right to say that,

* Ante, p. 103.

† Vol. i. p. 6.

inasmuch as the petition is decided, ~~there~~ is so far an end of the matter."

Production of
telegrams by
the Post-office
authorities.

Mr. Casserley, an officer in the General Post Office, was called upon a *subpoena duces tecum* to produce certain telegrams which had passed between two persons whose names were mentioned in the subpoena between two certain dates, but he refused to produce them without an order from the Court.

Mr. Baron BRAMWELL: "It is just as well that the matter should proceed technically."

Mr. Giffard: "I do not know whether your Lordship's attention has been called to the provision in the statute. I have asked the witness to produce the telegrams between A. L. Leonard and H. S. Leonard between January 27 and February 4."

Mr. Baron BRAMWELL (to the witness): "Do you object to produce them?"

A. "I do."

Mr. Baron BRAMWELL: "As at present advised, I will not make you."

The witness: "May I explain my objection?"

Mr. Baron BRAMWELL: "Your objection is that telegrams are of a confidential character, and the Post Office desire to keep the confidence unviolated."

The witness: "That is broadly so, but it is regulated by the interpretation put upon the two Acts of Parliament on the point. The Telegraph Act 1868 (31 & 32 Vict. c. 110), s. 20, enacts that 'any person having official duties connected with the Post Office, or acting on behalf of the Postmaster-General, who shall, contrary to his duties, disclose or in any way make known or intercept the contents, or any part of the contents, of any telegraphic message, or any message addressed to the Postmaster-General, shall be guilty of a misdemeanour.' The Act of 1869 (32 & 33 Vict. c. 78, s. 23) enacts that 'nothing in this Act contained shall have the effect of relieving any officer of the Post Office from any liability which would, but for the passing of this Act, have attached to a telegraph company or to any other company or person, to produce in any court of law, when duly required so to do, any such written or printed message or communication.'"

Mr. Baron BRAMWELL: "What do they mean by that?"

Witness: "I will not pretend to interpret this section, but the way the Post Office has taken of the section is this—that without express direction of the Court, it is contrary to the duty of the Post Office or any of its officers to produce in Court any telegram that may be called for having reference to the public interest at large. Your Lordship may probably be aware that the question was raised in the recent case at Taunton?" *

Mr. Baron BRAMWELL: "I was not unacquainted with the question before it was announced, because Mr. Justice Grove consulted my brother Mellor and myself about it."

The witness: "The difference between that case and this is that there they served a subpoena in general terms for the production of all telegrams sent to and from London during four months."

Mr. Baron BRAMWELL: "I have a strong impression that these documents are in the custody of her Majesty, and that you have no right to bring them here any more than a banker's clerk has a right to bring his master's ledger. I have a very strong notion to that effect."

Mr. *Giffard* submitted that the telegrams ought to be produced.

Mr. Baron BRAMWELL: "We must decide the matter technically. Do you ask him to produce the telegrams?"

Mr. *Giffard*: "I do."

Mr. Baron BRAMWELL (to the witness): "You are called upon to produce them. Do you produce them?"

Witness: "My instructions are not to produce them unless the Court directs me to do so. I must obey those directions."

Mr. Baron BRAMWELL: "Then you do not produce them?"

Witness: "I do not produce them."

Mr. Serjeant *Ballantine*: "Then I call upon your Lordship to order him to do so."

Mr. Baron BRAMWELL: "I decline to do so. I have dealt with this technically, and I have great doubts whether there is a power of compelling any person to produce them, for the reason I have

* Ante, p. 72.

named—namely, that they are in the custody of her Majesty; and I certainly have too much doubt about it to enforce it by the summary remedy of commitment for contempt for their non-production. I have little doubt that whoever drew that section * in the Act did intend that there should be some compulsion upon the Post Office authorities to produce the documents, but I am by no means sure that the proper means are used for doing it. The proper test is this, if you subpoena the Postmaster-General, he may say, 'I have not got them; they are in my possession as a servant of the Crown.' The matter is too doubtful for me to settle that question by the summary process of a committal for contempt, and more especially I am indisposed to do it because I really think that for the public good there ought to be no such power of compelling the production of these documents. It is the necessary consequence that persons who correspond by telegram are obliged to repose confidence in the Crown, and I believe it will be for the public good if it is found that that is a confidence that the Crown cannot be compelled to violate. Inconvenience might arise in many cases; it might arise in the case of a confidential communication between attorney and client, or husband and wife: therefore we must look to the general principle. I strongly incline to the opinion that it is for the good of the community that the necessary confidence of a sender of a telegram in the Post Office should not be violated. Therefore, taking that into account, and taking into account the doubt I have as to the power to compel the production, I will not enforce it by the summary proceeding of commitment for contempt of court. I should add to the remarks I have made that the Crown could always say, 'We think this ought to be produced, and we shall raise no objection to its production.'"

At the close of the Petitioners' case,

Mr. *Hawkins*, for the Respondents, stated that after the evidence which had been given of corrupt treating by agents, he would not further contest the seat. He asked leave to put the Respondents and several other persons in the witness-box to deny that they were in any way personally to blame in the matter.

* 32 & 33 Vict. c. 73, s. 23.

This having been done,

Mr. Baron BRAMWELL pronounced judgment, declaring that the Respondents were not duly elected, but exonerating them from any personal blame as to the treating.

As to the treating he said : “ I think it is very likely that Mr. Smith and the other people who got up these most unwise treats and entertainments did not know that what they were doing was contrary to law. The openness with which they did it was such as to exclude the notion that they thought that they were doing anything wrong. But I confess that I think it was very wrong. When we consider the character of the voters that were called here, the entire absence of education in all, and that they could neither read nor write, knowing nothing about the parties, except that one was blue and the other was yellow, it is impossible not to see that the treating and entertainment, whether it was a shilling or twopence, must have had the tendency to make people vote who otherwise would not have voted. Therefore, although I recognize the truth of Mr. Smith’s statement, and believe that the people who were parties to these unwise and unlawful entertainments did not know that they were doing wrong, I think it was a very improper thing, and I very much wish that the consequences could reach them rather than the two gentlemen who are unseated by acts done utterly contrary to their own wishes and intentions. I do not like to recommend proceedings for penalties, but it might read a very useful lesson to some of those gentlemen if they were made to pay some of the penalties they have incurred under the Act* by this most improper treating.”

Corrupt treating of illiterate and ignorant voters.

As to costs he said : “ Although there is no guilty knowledge on the part of the Respondents in this case, I must order them to pay the costs, and for this reason, that the only way the judge has of getting at those who commit wrongful acts is to get at those whom the law has made responsible for those unlawful acts, and in this case it is the two Respondents. And when one comes to consider that it is a perfectly possible thing that these corrupt practices may have influenced the election, and that the

Costs.

* Corrupt Practices Prevention Act, 1854, s. 4.

small temptation may have operated upon the small intelligences to which it was addressed, I think it is perfectly possible that the unsuccessful candidates may owe the loss of their return to these improper practices. I cannot, as I said before, blame the Respondents at all. I am satisfied they are perfectly innocent in the matter, and one cannot help being sorry for them. Perhaps they ought to have kept a sharper look-out upon what was going on. I am not going to insinuate what I do not say, that these things came to their knowledge, but it is very strange that they did not come to the knowledge of somebody whose duty it was to inquire into them and to report to these gentlemen. Be that as it may, I am of opinion that the Petitioners are in the right, and that the unsuccessful candidates have very properly suffered by these practices. The Respondents are responsible for them, and therefore I think that what one may call the ordinary consequences should follow—namely, that the Respondents in this case should pay the costs.”

CASE XX.

BOROUGH OF DUDLEY.

BEFORE MR. JUSTICE GROVE, APRIL 28, 1874.

Petitioners : Benjamin Hingley and others.

Respondent : Henry Brinsley Sheridan.

Counsel for Petitioners : Mr. Powell, Q.C. ; Mr. Jelf.

Agents : Messrs. Homfray and Holberton.

Counsel for Respondent : Mr. M'Intyre, Q.C. ; Mr. Hodson.

Agents : Messrs. Harrisons.

THE petition* was as follows :—

1. “ YOUR PETITIONERS, Benjamin Hingley and Edward Bowen, are persons who voted at the above election, and your Petitioners, Josiah Robinson and Thomas Foxall, are persons who had a right to vote at the above election.

2. “ And your Petitioners state that the election was holden on the 4th day of February, in the year of our Lord 1874, when Henry Brinsley Sheridan, Esquire, and Frederick Smith Shenstone, Esquire, were candidates, and the Returning Officer has returned the said Henry Brinsley Sheridan, Esquire, as being duly elected.

* As to the wording of the petition, Mr. Justice Grove said, “ The sole allegation in the petition, although it is conveyed in a vast number of words, is substantially that there was so much riot and intimidation by mobs that it was not a free election.” Vide *infra*, p. 119.

3. "And your Petitioners say that before and during the hours of polling on the said 4th day of February large crowds, mobs, and organised bands of disorderly rioters, violent and dangerous persons in the interest and in favour of the said Henry Brinsley Sheridan, assembled and congregated near to, at, and around divers of the polling booths and polling stations appointed for taking the poll in the said Borough, and assaulted and beat and insulted, and seriously intimidated and physically obstructed and necessarily alarmed and put in bodily fear large numbers of voters entitled to vote in the said election, who might and would otherwise have voted for the said Frederick Smith Shenstone, and prevented large numbers of such voters from approaching the said polling booths and voting therein, and prevented and deterred a large proportion of the voters entitled to vote in the said election from exercising the franchise at all in the said election, and large numbers of persons who had the franchise were not at liberty, as they ought to have been, to go, and had not the means, as they ought to have had, of going to the poll and giving their votes without obstruction and without fear or intimidation.

4. "And your Petitioners say that while on the one hand large numbers of voters who wore the colours of the said Henry Brinsley Sheridan, and who were known to be supporters of the said Henry Brinsley Sheridan, were cheered and permitted and encouraged by the said crowds, mobs, and disorderly bands to approach—and did approach—the said polling booths and polling stations and voted therein; on the other hand, large numbers of voters who did not wear the colours of the said Henry Brinsley Sheridan, and who were known to be supporters of the said Frederick Smith Shenstone, were hooted, illtreated, hindered, abused, and threatened by the said crowds, mobs, and disorderly bands, and were by them prevented and deterred from approaching and could not approach the polling booths and polling stations, or vote therein, as they were entitled to do, and ought to have been allowed to do.

5. "And your Petitioners say that about midday, and subsequently on the said 4th day of February, a serious riot took place in the said Borough, and a mob of persons in favour of the said

Henry Brinsley Sheridan, and opposed to the said Frederick Smith Shenstone, entered the town of Dudley, and also the town of Brierley Hill, smashed the windows of many houses therein, and did very great damage, and such riots were only checked by the arrival of a troop of mounted artillery, who had been telegraphed for for that purpose, and that, as well by such riots as by the other disorderly proceedings in the previous paragraphs of this petition set forth, the inhabitants of the said Borough became and were greatly alarmed, and life and property was considered unsafe in the said Borough, and large numbers of persons entitled to vote, and who otherwise might and would have voted in the said election, were necessarily deterred from voting at the said election, insomuch that out of a constituency of fourteen thousand voters in the said Borough nearly five thousand voters did not vote at the said election.

6. “ And your Petitioners say that about three o’clock in the afternoon of the said 4th day of February, the Mayor of Dudley, William Wilkinson, Esquire, being the Returning Officer for the said Borough, having before him police reports of the extreme intimidation and obstruction used by the said crowds, mobs, and disorderly bands, and of the unsafe and disorderly state of the Borough, and deeming life and property to be unsafe in the said Borough, adjourned the poll in certain districts of the said Borough, each of which contained several polling booths and polling stations, and himself read the Riot Act.

7. “ And your Petitioners say that the said Returning Officer in so adjourning the poll in the said districts adjourned it from Wednesday the 4th until Saturday the 7th day of February.

8. “ And your Petitioners say that the said Returning Officer then and there, that is, at about three o’clock in the afternoon of the said 4th day of February, publicly announced the said adjournment of the poll in the said districts from the 4th to the 7th of February at the Public Office of the said Borough.

9. “ And your Petitioners say that the said Returning Officer immediately after so publicly announcing the said adjournment as aforesaid despatched written orders to the presiding officers at each polling booth and polling station within the said districts to adjourn accordingly, but in consequence of the prevailing

blockade and confusion none of such orders reached or could reach the said polling booths and polling stations respectively until after four o'clock p.m., when the poll at those booths and stations had already closed.

10. "And your Petitioners say that in consequence of the said public announcement of adjournment divers voters entitled to vote, and who otherwise might and would have voted in the said districts for the said Frederick Smith Shenstone, abstained from voting, and did not vote in the said districts.

11. "And your Petitioners say that on the next day, the 5th day of February, the said Returning Officer, disregarding his said announcement of adjournment served the agent of the said Frederick Smith Shenstone with a written notice that he should proceed with the counting of the votes, and should declare the poll on that day, the 5th day of February, and the said agent of the said Frederick Smith Shenstone protested against the said notice.

12. "And your Petitioners say that accordingly on the said 5th day of February the said Returning Officer caused the counting of the said votes to be proceeded with, and when it was completed the said agent of the said Frederick Smith Shenstone handed to the said Returning Officer the following written protest:—

" "Dudley Borough Election.

" "TO THE RETURNING OFFICER,—

" "I, as agent of Mr. Frederick Smith Shenstone, protest against your making a declaration of the poll, as you had given public notice yesterday, previous to the close of the poll, of your having adjourned the poll until Saturday next, in consequence of the obstruction to, and intimidation of, Mr. Frederick Smith Shenstone's voters, and of the disorderly state of the Borough.

" "Dated the 5th day of February, 1874.

(Signed)

" "JESTON HOMFRAY.'

13. "And your Petitioners say that the said Returning Officer nevertheless and notwithstanding, and in spite of the said protest,

to wit, on the said 5th day of February, declared the poll to be as follows :—

Sheridan	. . .	5149
Shenstone	. . .	4181
		—
Majority for Sheridan	. .	968
		—

and he has returned the said Henry Brinsley Sheridan as being duly elected as aforesaid.

14. “And your Petitioners say that on the said 4th day of February it became, and was, as it still is, evident that the aforesaid riots and intimidation were so general as to influence the votes of the body of voters, and by reason of the premises freedom of election was violated at the said election, and that the numbers actually polled thereat did not, could not, and do not represent the real opinion and political feeling of the majority of the constituency, and that without an adjournment or a fresh election such real opinion and political feeling could not and cannot be ascertained.

“Wherefore your Petitioners pray that it may be determined that the said Henry Brinsley Sheridan, Esquire, was not duly elected or returned, and that the election was void.”

In the course of the case,

A witness was asked by Mr. *Powell*, for the Petitioners, “Are you a paid canvasser?”

Evidence confined to allegations in petition.

Mr. Justice GROVE: “I do not see how this bears upon the question at issue. The sole allegation in the petition, although it is conveyed in a vast number of words, is substantially that there was so much riot and intimidation by mobs that there was not a free election. Upon what issue in the petition can it bear whether this man is a paid canvasser or not?”

The question was not pressed.

Mr. *M'Intyre*, in opening the Respondent's case, stated that he should call evidence to prove (1) that the account given of the

rioting was an exaggerated one, and (2) the rioting was caused as much by the partisans of the defeated candidate as by those of the Respondent.

Effect on
election of riots
caused by
partisans of
defeated
candidate.

Mr. Justice GROVE at once said as to the Respondent's case:—
“As to the proving that there was violence on the part of the supporters of the defeated candidate, I do not see how that can bear upon the case, unless it was substantial and formed a large part, as it were, of the proceedings, and unless Mr. M'Intyre can show that the defeated candidate is interested in this petition (that is to say, that it has been lodged at his instance, and with his privity), and that he is therefore seeking to take advantage of his own wrong. Suppose, for instance, a case in which one of the two candidates had obviously an entirely one-sided mob, we will presume for a moment on the Petitioner's side, then I think it might well be that the judge might say, ‘No, I will not unseat the member who is innocent for the sake of a person who has done all he can, or whose agents have done all they can, to prevent that member being seated.’ Nothing of that sort has as yet transpired from Mr. M'Intyre's cross-examination. All that I could gather from that was, that there was some extent of it. I have a duty not only to these two parties, but to the voters, to the public generally, to see that the franchise can be fairly exercised. Of course, one would not set aside an election for any trifling disturbance which may take place, as it sometimes does, good naturedly, at an election, without any real hindrance or impediment to the voting. What I have to look at is whether there was such a substantial riot and tumult as prevented any large number of the electors from voting.”

After several witnesses had been called for the Respondent, Mr. Justice GROVE said as follows:—“I will assume that there was a great deal of blame on each side without expressing any opinion as to the conduct of the respective candidates, and my impression from the evidence is that the mob on the Respondent's side was much the most powerful, not perhaps because there were more things done to instigate it, but because he had the larger number of supporters on his side. Assuming the facts to be so, and assuming also that there was such a state of

things as really placed the whole town in a state in which reasonable men, who were not very zealous partisans, or men of extraordinary courage, had not a fair opportunity of voting, it is clearly laid down in the cases* that, quite irrespective of any agency on the part of the candidates, intimidation that prevents free voting avoids an election. An election is supposed to be the voluntary voting of the people, and if the state of the things in the town is such that that cannot be properly exercised, there cannot be said to be an election."

Mr. *M'Intyre* then stated that after his Lordship's expression of opinion he should not press the Respondent's case any further.

Mr. Justice GROVE, in his judgment declared the election void at common law on the ground of rioting, and said as follows:—

"Having expressed my opinion as to the law bearing on this case during the course of it, and having referred to the opinions of the learned judges, Mr. Baron MARTIN† and Mr. Justice BLACKBURN,‡ I think it unnecessary to go into the evidence in detail. Assuming, as indeed I am satisfied, that the rioting and assaults were not committed by mobs acting for one side only, and that the more formidable violence on the part of the mob which espoused the Respondent's side, was not due to any greater exertions by his immediate partisans, but was rather due to the fact that he had a much larger number of supporters among the class by which the riots and assaults were committed, I am of opinion that the tumultuous assemblages gathered together, and the acts of extreme violence committed at the polling places were such as were calculated to intimidate and deter, and did intimidate and deter a large number of voters from exercising the franchise, and that very many voters were actually prevented from exercising it, that the election was not a free one, and that the constituency had not a fair opportunity of freely exercising the franchise, therefore this election is void. I by no means say that if a case had been made out of the violence

* *Staleybridge*, vol. i. p. 72; *Nottingham*, *ib.* 246; *Longford*, ante, p. 12.

† *Nottingham*, vol. i. p. 246.

‡ *Staleybridge*, vol. i. p. 72.

being wholly or substantially on the side of the defeated candidate, and if I was satisfied that ~~the~~ result of the poll was a fair expression of the opinion of the constituency, I should have come to this conclusion, but the case, taking it in the most favourable view for the Respondent, stops far short of this."

. As to costs he said :

Costs.

"I have no evidence to show that the candidates themselves promoted these riots, but men were employed by the supporters of both candidates of a character which, so far from being likely to prevent breaches of the peace, was much more likely to encourage them. Considering therefore that there is blame on those who were acting for both sides, I decide that each party pay their own costs."

CASE XXI.
BOROUGH OF POOLE.

BEFORE MR. JUSTICE GROVE, MAY 4, 1874.

Petitioners : 1st Petition, Charles Hurdle and Henry Stark ; 2nd Petition, Hiram Young and John Rennison.

Respondent : Mr. Charles Waring.

Counsel for Petitioners : Mr. Hardinge Giffard, Q.C. ; Mr. W. G. Harrison.

Agents : Messrs. Ellis and Co.

Counsel for Respondents : Mr. Serjeant Ballantine ; Mr. M'Intyre, Q.C. ; .
Mr. Bowen.

Agents : Messrs. Cope, Rose, and Co.

THE first petition contained the usual allegations of bribery, treating, undue influence, and personation by the Respondent and his agents, but did not pray the seat.

The second petition, in addition to the usual allegations of corrupt practices by the Respondent and his agents, alleged " that general bribery, treating, and undue influence were practised before, at, and after the said election by divers persons, and that by reason thereof the election and return were and are wholly null and void."

8. " That after the said election and return, and within 28 days before the presentation of this petition, divers payments of money were made by the said Charles Waring, by himself and by others, with his privity and on his account, in pursuance and in furtherance of the corrupt practices hereinafter alleged, to divers voters and other persons and to persons on behalf of voters.

9. "That after the said election and return, and within 28 days before the presentation of this petition, that is to say, on the 27th day of February, 1874, payment of money was made by Horatio Hamilton with the privity or on account of the said Charles Waring, the Respondent, to Sophia Matthews on account of James Matthews, a voter at the said election, and to divers voters, and persons on account of voters, at the said election, in pursuance and furtherance of the corrupt practices hereinbefore alleged, that is to say, the offer or promise made by an agent or agents of the Respondent to the said James Matthews and to the said other voters to give or promise the said payment of money to or for the said James Matthews and the said other voters, or some other payment of money to or for the said James Matthews, and the said other voters respectively, or on his or their behalf, in order to induce the said James Matthews and the said other voters to vote or refrain from voting at the said election."

And the petition prayed that the election might be declared void.

The charge of personal bribery entirely failed, as also did several cases of bribery by agent. But one case of bribery by agent was proved, and it was also proved that corrupt treating had been committed by several other persons whose agency was not disputed.

The two petitions were heard together.

In the course of the case,

Corrupt
treating after
the close of the
poll.

It was proved that at the previous election in 1868 the election agent returned £479 as the election expenses of the Respondent, but that after he had made this return further bills were sent in, amounting to £1,360. These bills he paid, but he did not make any fresh return of election expenses. Some of these bills were for drink and refreshments supplied before, during, and after the election. It was also proved that shortly after this election bills were sent in to the Respondent by a number of publicans for beer given away after the election was over; it was admitted that this beer had been ordered by the Respondent's agents, but it was argued that there was nothing to show that the giving away of this beer was corrupt treating within the meaning of the Corrupt Practices Act 1854, s. 4.

Mr. Justice GROVE, in his judgment, said as to this as follows :
 It may be said as to the election in 1868 that the Respondent's
 agent was not aware that any further claims were going to be
 made against him when he made out his account of the election
 expenses, but that, finding the people expected to be paid for the
 beer and refreshments supplied, he had (from what may be called
 a sense of honour) paid the bills when they were sent in. If so,
 he should have taken the utmost pains to prevent the recurrence
 of such a thing at a future election. But I cannot find that
 anything was done to prevent it, and apparently in some way or
 other the publicans became advised of what they considered to
 be the law, viz., that although you may not give away beer or
 eat *during* the election you may treat as much as you please
 after the election is over ; and, moreover, they seemed to have
 perfectly understood that they might make up their minds that
 this would be the mode of acting. It is a curious coincidence
 that they should all of them have suddenly acquired this view of
 the law, and that they should all have dated their bills the day
 after the election. Some of them sent in their bills for an amount
 of beer which, if it was really consumed in one or two days, would
 have been most extraordinary. That a man, for instance, renting
 a house at £16 a year should in one or two days give away £20
 worth of beer, it seems to me to require a high degree of cre-
 dibility to induce one to believe that that was a perfectly straight-
 forward matter, and that it was merely an innocent treat of a
 spontaneous nature, which arose after the election was concluded.
 No doubt it was decided in the Brecon case * that a genuine
 cheering festival spontaneously given without any preconceived
 design might not be a payment for having voted, yet we must
 consider each case with reference to its attendant circumstances
 and see whether there was not (although not expressed in terms) a
 tolerably clear understanding not only that those people were to
 give a very considerable amount of beer to give away after the
 election, but also that their proceedings would not be scrutinised
 so closely, provided only that they sent in their bills after the
 election. It is a curious thing that my brother Lush, in his

* Ante, p. 43.

judgment in the Brecon case, seems to anticipate this very case, for after deciding that Mrs. Gwyn Holford's alleged treating for such a purpose might imperil a future election, where it was desired to influence the votes, he goes on to say : ' Nor can it be the merely giving an entertainment as an expression of gratitude, or by way of rewarding the voters. So to hold would be to give no meaning to the word "corruptly," for the Act says that the offence shall consist, not in the mere giving meat, drink, &c., to a voter "on account of his having voted," but the doing so corruptly on account of his having voted. And this agrees with the 5 & 6 Vict. c. 102, s. 22, which was repealed by the Corrupt Practices Act, 1854, the language of which was, not rewarding merely, but *corruptly* rewarding such person for having voted. I am, therefore, driven to the conclusion that the treating which the Act calls corrupt as regards a bygone election must be connected with something which preceded the election, must be the complement of something done or existing before and calculated to influence the voter while the vote was in his power. An invitation given before to an entertainment to take place afterwards, or even a promise to invite, or a practice of giving entertainments after an election, which it may be supposed the voters would calculate on, would, if followed up by the treat afterwards, give to it the character of corrupt treating.' This is almost literally expressing in words what appears to have taken place in this case, that is to say, a practice of giving entertainments after an election, which would be corrupt treating if it can be supposed that the voters had been induced by promises to calculate upon such an entertainment being given. Here at a previous election there had been a paying of persons for beer connected with an election, and there has obviously been an expectation in the minds of the publicans of the borough who supported the Respondent that there would be large bills allowed and paid if they sent the bills in afterwards, and then (what perhaps is the strangest of all) when those bills were sent into the Respondent's agent he does not send them back, or repudiate them ; he merely keeps them without a word of remonstrance. Can any rational mind doubt that after this trial was over, if the sitting member had been declared to have been duly elected, every one of those bills would

e been paid? What is the object of keeping them? Why
 there no remonstrance or repudiation? What can one sup-
 e, viewing human affairs with every reasonable amount of
 rity, but that every one of those bills would have been paid,
 so the matter would have gone on, *toties quoties*? Can it be
 l that this large extent of treating was all a sudden, spon-
 eous idea, as in the Brecon case, where an entertainment was
 en merely as a spontaneous rejoicing, never having been
 aught of before by either one party or the other? To my
 d it seems impossible that a rational intellect could come to
 h a conclusion. And if it were not so, what would be the
 sequences? Why, that at every future election for this
 ough there would be an understanding which would virtually
 unt to a certainty that as soon as the polling day was over,
 re would be an enormous quantity of beer distributed, and the
 unt which the publicans gave away before or after the election
 ld never be enquired or looked into. The broad and obvious
 e of this whole matter is that it was expected, and I think I
 y say understood, though not expressed in absolute words, that
 rge sum of money would be paid for beer, that a large amount
 beer was ordered by an agent of the Respondent immediately
 r the election day had passed, and that that was so immediate
 . followed the election in such a way that it would be impossible
 ay that it was a mere spontaneous rejoicing, and not in any way
 nected with what had gone before. By these considerations, I
 led reluctantly to consider that there was treating at the
 ent election, and that that treating was sufficiently connected
 h the election in 1868 (agreeing entirely with what my brother
 sh has said in the Brecon case) to make it corrupt, as the
 d is applied by all the learned judges—namely, that it was
 ended to produce an influence on the vote, or to reward the
 er for having voted.”

Mr. Justice GROVE, in his judgment, declared the election void
 the ground of corrupt treating.

As to costs, he said: “I am by no means satisfied with the Costs.
 de in which this case has been brought forward. One of the
 itions is only a supplementary petition, filed after the first one

to meet some difficulty which occurred as to the time at which the first petition was presented. Of the two petitioners in the first petition one is a marksman, and it may be assumed that he cannot write his name, and the other writes his name in a thoroughly uneducated hand, which shows that it was as much as he could manage to scrawl his name. What meaning can be attached to that except that those who are really interested in this matter put forward persons who cannot pay any costs beyond the amount of money which they are supposed to have deposited, but which in all probability has been deposited for them, nevertheless if they succeed, they expect to get costs out of the Respondent. The general course in these cases is no doubt to give costs to the successful party, but I shall not do so on this occasion. When a defeated candidate comes forward in a straightforward way and succeeds in an election petition, as a general rule I should do as I have done in other cases, that is to say, let the costs follow the event. But here persons appear to have been put forward who may receive costs, but who cannot pay them. I have had no evidence before me to show that this marksman and this other illiterate person came forward here for purely constitutional reasons to purify the electoral franchise of the borough, and, notwithstanding the challenge of my brother Ballantine, they have not been called to show that they have not been set up by other people. On these grounds, I must say that I do not approve of this petition. If I had thought that everybody had been straightforward, I should have given costs against the Respondent, but here, taking these circumstances into consideration, and taking also into consideration that many of the charges have failed, and that it is impossible not to see that this petition was to some extent what I may call a fishing petition, I shall order that each party pay their own costs."

CASE XXII.
BOROUGH OF LAUNCESTON.

BEFORE MR. JUSTICE MELLOR, MAY 4, 1874.

Petitioner : Herbert Charles Drinkwater.

Respondent : James Henry Deakin.

Counsel for Petitioner : Mr. Leresche ; Mr. Bompas.

Agent : Mr. J. Gurney.

Counsel for Respondent : Mr. Serjeant Parry ; Mr. T. N. Edwards.

Agents : Messrs. Peacock and Goddard.

THE petition contained the usual allegations of corrupt practices, and further alleged,—

4. “ That many persons voted at the said election, and were reckoned on the poll for the Respondent who were before, during, and after the election bribed, treated, and unduly influenced, and that the votes of such persons were null and void, and ought now to be struck off the poll.

6. “ That the Respondent having for the purposes of influencing voters at the election given to certain voters in the said Borough immediately before and at the said election a right to trap and shoot rabbits, was guilty of corrupt practice, and was disqualified from being a candidate for the said Borough, and that all votes given for him after due notice of such disqualification would be thrown away.”

It was proved that in the course of 1872 the Respondent, a

gentleman of fortune in Lancashire, heard that the Werrington Park estate was in the market. It appeared that among other advantages held out to the purchaser was the influence which it would give him in the return of a member for the Borough; the Respondent purchased the estate as an investment, but that was among the temptations held out to a purchaser. The purchase was agreed to at the end of 1871, and about Lady Day, 1872, the Respondent took possession. At that time nothing particular transpired, but later on he came again, bringing with him two gamekeepers, and in presence of Paver, his land agent, he made enquiry as to the state of the game upon the estate, and he was then told by one of the keepers that there were too many rabbits. The Respondent then and there expressed a determination that the rabbits should be kept down, and said he would not permit his tenants to suffer in consequence of an excess of rabbits or game. When the Respondent bought the estate the farms were let under yearly agreements, subject to be put an end to by six months notice to quit, and in each agreement there was an absolute reservation of all game, fish, and wild fowl to the owner of the estate, and to any persons whom he chose to permit to sport. This was the state of things when the Respondent came into possession of the estate, and it so continued; except in two instances, no steps were taken to give notice to the tenants, or by the tenants to give notice to the landlord. Very soon, however complaints began to be made by the tenants of injury done by rabbits, and these complaints became so frequently repeated, that the Respondent gave orders that a trapper should be engaged, and proper steps taken to diminish the number of rabbits. Notwithstanding the engagement of this trapper the rabbits continued to do damage, and as late as December 5, 1873, the Respondent's agent, after holding a rent audit, wrote to the Respondent as follows: "The only discordant element at the audit was the rabbit damage." Such was the state of things when towards the close of January, 1874, an immediate dissolution of Parliament was suddenly announced. It appeared that the Respondent had six months before this time stated his intention, whenever a dissolution should occur, of standing for this borough. Accordingly the Respondent now offered himself

as a candidate in the Conservative interest, the present Petitioner standing on the Liberal side. On Thursday, January 29, the Respondent issued his address to the electors, in that address he referred to various topics, but did not mention or allude in any way to the subject of game or the game laws. After issuing his address the Respondent attended a meeting on this Thursday evening, and he then went through the various topics to which he had referred in his address. But before the meeting was over there came a mob of people who attempted to get up a considerable uproar by shouting out "Rabbits," and exhibiting a rabbit skin upon a pole, and reading out a handbill in which the Petitioner was praised and the Respondent disparaged. Among other things in that handbill there were allusions to the game question. Upon this uproar arising the Respondent came forward and said, referring to the handbill, "As to the matter of rabbits, on which question my opponent is trying to make capital against me, I tell you I am anxious that every rabbit in the neighbourhood should be destroyed, and am taking every step to destroy them, and am now employing more trappers for that purpose (loud cheers), and shall be glad for any of my friends to have them when they are shot."

The next night (Friday) the Respondent attended another meeting at St. Stephen's, a place where he owns a good deal of property. At that meeting a large number of his tenants were present, and he said with regard to this rabbit question as follows: "I give authority for you, every one of you, to kill every rabbit upon my estate; kill them, ferret them, shoot them, trap them, do whatever you like, send them to market, do whatever you will, I shall consider it a great comfort if you come to me next month, and say to me you have killed every rabbit on the estate." On the same evening after the meeting was over and the Respondent had gone away, Mr. Cowland, his agent, made a speech to the electors, in which he said, "I don't think that a single question of difficulty now remains between you and him (meaning the Respondent), specially now that the little four-legged question has been got rid of." These speeches of the Respondent and his agent, Mr. Cowland were published the next morning (Saturday) in a local

newspaper in a leading article of which the following paragraph appeared: "There is very little doubt as to the triumphant return of Colonel Deakin, who is beyond all comparison the more popular candidate of the two, and we venture to say that the majority of those who are now opposing him feel that for the town Colonel Deakin is by far the better man to be elected. As a landlord he has rendered himself highly popular by the kindest consideration for the interests of his tenants. He has most handsomely removed the rabbit difficulty out of the way."

As soon as this number of the local paper appeared, the Respondent's agents ordered a thousand extra copies of it to be printed and circulated gratis among the townspeople. On this same Saturday after that paper had been circulated in the Borough there was another meeting, at which, after discussions about a variety of political questions, the rabbit question was alluded to, and a Mr. Frost, an agent of the Respondent, repeated what the Respondent had said on the subject at the meeting at St. Stephen's on the previous evening.

Mr. Justice MELLOR, in his judgment, having recapitulated the facts above stated, said:—

"The whole validity of the late election turns upon the question whether the concession or declaration made at the various meetings during the election, and just before the poll, by the Respondent, did or did not amount, under the circumstances, to a corrupt practice within the meaning of the Corrupt Practices Act, or to a corrupt practice or an act of bribery at common law. I am satisfied that what passed at those meetings was done for the purpose of influencing in some way the election then about to take place."

After a further review of the evidence he added:—"I cannot help saying that what was done was done not so much from an abstract sense of justice as from a desire to influence the election. Having come to that conclusion the question then is, whether the statements, made as they were at a meeting composed very much of the tenants of the Respondent, amount to an offer or promise which comes within the meaning of this Act. The word 'corruptly' has been several times under the consideration of the judges, and, as far as I know, they are all agreed upon its

meaning; and my brother BLACKBURN, certainly on two occasions,* has laid down the law in reference to it in terms which are exceedingly clear. He said in the Hereford case,† ‘what is the exact meaning of the word “corruptly?”’ (that was upon the 4th section of the Act), it means contrary to the intention of the Act, with a motive or an intention by means of it to produce an effect upon the election, not going so far as bribery, but going so far as to produce an effect upon the election.’ Now where the motive is a bonâ fide one of giving a privilege to a tenant, where the landlord expects nothing in return, and to exercise no influence upon his tenants’ conduct, that question does not arise, but where the motive is to produce an effect upon the election, then I think the offer, if it be an offer within the meaning of the section, made to voters, comes by force of that meaning to be within the definition of the section an offer made, and made to influence by the means I have already pointed out. But then comes the question whether or not this is a valuable consideration. I cannot help thinking it is a consideration which is valuable and appreciable, and that being so, I am bound to come to the conclusion that this was a corrupt act done by the Respondent himself. I cannot go into any intention of the Respondent, I must be governed by what he said and what he did, and by the inferences I ought to draw therefrom.”

Mr. Justice MELLOR, in his judgment, declared the election void.

The scrutiny was then proceeded with, and ultimately the question as to the claim of the seat by the Petitioner was reserved for the Court of Common Pleas.‡

Costs followed the event.

Costs.

* *Seamble*, Wallingford, Vol. I. 59, and Hereford, ib. 195.

† Vol. I. 195.

‡ The case is reported in *Drinkwater v. Deakin*, L. R. 9 C. P. 626.

CASE XXIII.
BOROUGH OF DURHAM.

Before Mr. Baron Bramwell, May 19, 1874.

Petitioners: James and Another.

Respondents: Mr. Charles Thompson and Mr. John Henderson.

Counsel for Petitioners: Mr. Seymour Russell, Q.C.;
Mr. A. L. Smith.

Agents: Mr. J. Crowley.

Counsel for Respondents: Mr. Charles Russell, Q.C.; Mr. Greenhow;
Mr. Macdonald.

Agents: Mr. W. Ford.

THE petition contained the usual allegations of corrupt practices, and did not pray the relief.

Several cases of bribery by agents were proved.

In the course of the case.—

The returning officer was called to produce the bills and vouchers relating to the election expenses which had been sent in to him pursuant to the requirements of 26 Vict. c. 29, s. 4. After producing them.—

Mr. Russell, for the Respondents said: "We have no objection to copies being furnished or taken of them. I think it right to say that the Returning Officer is only bound and only entitled

Producing
copies of
election
expenses sent
under 26 Vict.
c. 29, s. 4

under the Act* to allow inspection of the accounts, but not to allow copies to be taken. I do not know whether that is the right view or not, but it has been acted upon.

Mr. Baron BRAMWELL :—“ The Act of Parliament does not compel them to allow copies to be taken, but whether it prevents them doing that I do not know. I suppose you have no objection to their taking copies ? ”

Witness :—“ I have no objection to anything your lordship requires.”

Mr. Baron BRAMWELL :—“ I should think there is no objection to the Petitioners being allowed to take copies. My notion is that though not compellable to permit copies to be taken the returning officer had better let both parties have copies.”

It was proved that a number of men were employed by the Respondent's agents to act at the time of the election as “ runners.” Their duties were to carry notes and messages from one part of the Borough to another, and it appeared that it had been the custom to employ “ runners ” at many previous elections. But few of these runners were voters themselves, but a very large number of voters had children or relations employed as such.

Employment of
“ runners.”

Mr. Baron BRAMWELL said in his judgment as to these runners as follows :—

“ We have seen from the very candid evidence of Mr. Granger [a solicitor and one of the Respondent's principal agents] that these runners were not wanted for the work they professedly had to do, but that they were appointed, many of them, for other purposes and other considerations. It is admitted also that there were a very large number of voters who had children or relatives employed, and we hear two instances of two children being professedly employed, neither of whom did any work. When we consider what sub-

* 26 Vict. c. 29, s. 4, is as follows :—“ A detailed statement of all election expenses incurred by or on behalf of any candidate shall within two months after the election be made out and signed by the agent, . . . and delivered, with the bills and vouchers relative thereto, to the returning officer . . . and the said returning officer shall preserve all such bills and vouchers, and during six months after they have been delivered to him, permit any voter to inspect the same on payment of the fee of one shilling.”

ordinate persons were employed, and the indiscriminate and careless way in which they were selected, one cannot help seeing that this was a very great means of corruption. Where, however, a gentleman like Mr. Peele* says that in his judgment these runners are necessary (in a sort of fashion apparently peculiar to the city of Durham for anything I can see), and that their numbers were not excessive, one hesitates very much to trust to the dictates of common sense in the matter, and to decide against them. If the case had turned upon this only I confess I should have been most reluctant to say that there had been corrupt practices or bribery in the employment of these runners, but if I might venture to give a warning word to the City of Durham and to those who may endeavour to be its representatives at some future time, it would be to caution them most strenuously against the repetition of this practice, for it is impossible not to see that it may be held to be a corrupt proceeding."

What sufficient
to prove
agency.

It was proved that a voter was bribed by one Dawson, but Dawson's agency was disputed by the Respondents.

Mr. Baron BRAMWELL, in his judgment, said as to this:—"The question is, was Dawson an agent? I am of opinion that he was. It is not necessary in the nature of things that candidates should have an agent at all. They might, for anything I know, be able to get on without one, and in the last Taunton case I rather think that it appeared that some arrangement had been made by which nobody should be an agent. However, in this case it cannot be pretended that it was so. I cannot see how anybody could be more an agent than Mr. Dawson was, except that what he did was limited to a district, whereas the general agents might be more extensively employed than that. Mr. Dawson attended the Respondent's committee, he said he was there as many as twenty times. He was also present at the local committee, and on the day on which he bribed the voter he was busy in getting up voters who required particular attention. I should, for my own part, have thought

* Mr. Peele had been a chapter clerk in the employ of the dean for forty years, and had had great experience in election matters in previous elections, but had nothing to do with the present election.

hat that was of itself enough if he was to use anything like solicitation or persuasion to them. If he was merely a person to take cabs to them, and had no authority to influence them at all, then possibly he might not be such an agent that a bribe by him would bind the Respondents. But he was, as I understand, a person who it had been arranged should on that day get the attendance of the voters, that is to say, use his influence and persuasion to bring them up, and in the course of doing that he unfortunately gave this bribe."

Mr. Baron BRAMWELL, in his judgment, declared the election void on account of corrupt practices by agent.

As to the employment of voters, he said:—"Great complaint has been made of the employment of voters, not actually as canvassers, but to accompany the canvassers. It is a very remarkable thing that so large a number of voters should have been employed, and that the receipts of the voters who were so employed should have been so much more considerable than the receipts of persons employed in a similar capacity who were not voters, and it is impossible to shut one's eyes to the fact that that may be made the means of very extensive and very efficacious bribery. It is impossible to suppose that people cannot be found fit to do those duties who have not a vote, and I should strongly recommend that in future such persons should be found, or that if they cannot be found the thing be left undone, because it may no doubt be made a system, and those who do it cannot have a doubt that it is made to a certain extent the means of influencing voters, at all events to this extent, that though there were good blues on the one hand, or good reds on the other, if they had not had this employment they might have turned from blue to red, or from red to blue, as the case may be. Therefore, if it is only done to secure them, it is of a mischievous character, because it is having an influence on their minds which it ought not to have."

Employment
of voters.

Costs followed the event.

Costs.

CASE XXIV.
BOROUGH OF BOLTON.

BEFORE MR. JUSTICE MELLOR, MAY 22, 1874.

Petitioners : Ormerod and others.

Respondent : John Kynaston Cross.

Counsel for Petitioners : Mr. Herschell, Q.C. ; Mr. Leresche ; Mr. Edge.

Agent : Mr. T. W. Goldring.

Counsel for Respondent : Mr. Charles Russell, Q.C. ; Mr. Edwards.

Agents : Messrs. Chester & Co.

THE petition contained the usual allegations of corrupt practices, an allegation that the Respondent did by himself and his agents, and other persons on his behalf, for the purpose of unduly and unfairly influencing the election and procuring the return of the Respondent thereat, unlawfully conspire with and did designedly, illegally, and corruptly induce divers persons in attendance at divers polling stations at the said election, and whose duty it was by law to maintain and aid in maintaining the secrecy of the voting in such stations, and who had made or had hereafter to make the statutory declaration of secrecy in that behalf, to wilfully, deliberately, and of purpose violate the provisions of the Ballot Act, 1872, and to unlawfully communicate to them, the said John Kynaston Cross and his agents, and other persons on his behalf, before the poll was closed information as to the name and numbers on the register of voters of certain electors who had and had not applied for ballot-papers, and voted at said polling stations ; and a fifth allegation that the Respondent did by himself, his agents, and other persons on his behalf,

for the purpose of unduly and unfairly influencing the said election, and of procuring the return of the said John Kynaston Cross thereat, knowingly, deliberately, and of purpose contrary to law, pay and engage to pay money for and on account of the conveyance of voters to the poll; and it prayed that the election might be declared void.

The evidence given in support of the petition failed to establish a case.

In the course of the case,

Mr. Casserley, a Post Office official, was called by Mr. Herschell, for the Petitioners, and asked to produce the original telegram sent from the Reform Club, Bolton, to Sheffield, on February 3rd, at 2.19 P.M.

Production of original telegram after its contents are known.

Witness: "For the present I decline to produce it. I wish to submit the facts to the Court. The Post Office has had on previous occasions to deal with two classes of cases: the first class is that of actions between two parties who are parties to the telegram; if one of these parties requests the production of the telegram for his own interest the Post Office produces it. The second class has been where, as in this case, third parties have called for the production either of a whole class of telegrams or of some species of telegram, to be used as evidence against the sender, the receiver of them not being a consenting party to their production, nor in fact being concerned in any way in the question at issue. But in this case I find that the receiver has been called as a witness, and consequently this is a case which differs from both the cases I have mentioned, and I am anxious not to do anything on my own responsibility which the Postmaster-General might think exceeded the previous cases."

Mr. *Herschell* stated that in this case the question was whether, the telegram which had been received having been produced by the receiver, the original document, which was in the custody of the Post Office, could not be called for in order to ascertain who sent it. He submitted that there should be a means of compelling the production of the original of a message, and that in the case, for instance, of a false message to the Stock Exchange for the

purpose of affecting the condition of the funds, it would be essential that the original should be produced."

Mr. Justice MELLOR: "What was the case at Stroud?"*

Witness: "That case came to this:—Telegrams from A. to B. between certain specified dates, and particularly those on certain indicated dates, were called for. I objected to produce them without the order of the Court, and Baron Bramwell declined to make any such order. If this case had been of an exactly similar kind—if, that is, there had been an objection on the part both of the sender and receiver to the production of the telegram,—I should have followed the same course; but this is a third case, which upon my own responsibility I cannot possibly solve. I therefore am anxious to follow your Lordship's directions, rather than do anything voluntarily."

Mr. Justice MELLOR stated that he would consult Mr. Baron Bramwell upon the point before giving his decision.

Upon the following day he said as follows:—

"I have consulted my brother Bramwell upon the question of producing the original telegram, and he entirely agrees with me. He adopts the view which was suggested by Mr. Herschell—namely, that it would be of very serious consequence if we were to hold that, the contents of the telegram already having been disclosed, we would withhold the original when it was required for the purpose of tracing the act of an individual, and in criminal cases it would involve the greatest difficulty if we were to throw any doubt upon the propriety of its production. We think these considerations are paramount, and I must therefore request the gentleman who has the custody of the telegram to produce it for the purpose of its being identified, if you have the means of identifying it."

The original telegram was then produced.

Upon a canvass-book being called for by the counsel for the Petitioners.

Mr. Justice MELLOR said: "The fact of a man having a canvass-book is only a step in the evidence that he is a canvasser authorised by candidates' agents. I see no reason why you should

* Ante, p. 111.

k for the canvass-book, and if they give it you, you will see the canvasser, and then you may call that person and ask y whose authority he canvassed those votes. Of course the ction of the canvass-books proves nothing, except that n ticks appear on it. If you want to go further, call the sser, because the mere fact of a man having a canvass-book canvassing cannot affect the principal, unless I know by the man was employed. There is nothing more difficult or delicate than the question of agency, but if there be evidence might satisfy a judge, and if he be conscientiously satisfied he man was employed to canvass, then it must be held that ts bind his principal."

. *Leresche* called attention to the *Staleybridge* case,* where was volunteer canvassing.

. Justice MELLOR: "I should not, as at present advised, that the acts of a man who was known to be a volunteer canvasser, without any authority from the candidate or any of his agents, bound the principal. You must show me various things, must show me that he was in company with one of the principal agents, who saw him canvassing, or was present when he was canvassing, or that in the committee-room he was in the presence of somebody or other acting as a man would act who was authorized to act. If, putting all these things together, you satisfied that the man was a canvasser with the authority of the candidate or agents, then I do not look with nicety at the precise steps, there must be something of that character."

was proved that on the polling-day the returning officer visited the various polling stations in company with the Town Clerk. At each of the polling stations he remarked that the election agents for the Respondent Cross were furnished with a register of the voters to which tickets were attached opposite the name of each voter. As soon as a voter had voted the agent stealthily tore off the ticket and put it in his pocket, and subsequently conveyed it to some person outside the polling station, and by this means persons outside knew, while

Effect on
election of
deliberate
violation of the
Ballot Act.

* Vol. i. p. 66.

the poll was going on, who had voted and who had not voted. After calling the attention of the Town Clerk to what he had observed, the returning officer communicated with Mr. Winder, the Respondent's agent, who on the night before the election, upon hearing that something of the kind was contemplated, had expressly forbidden it to be done. Mr. Winder immediately wrote to each of the personation agents to request them to desist from what they were doing, and the returning officer observed, on again visiting the various polling stations, that some of the agents had desisted, but some had not. The returning officer subsequently communicated what he had observed to the Home Secretary.

It was submitted by the Petitioners that this proceeding was a deliberate and wilful violation of the provisions of the Ballot Act, and that in consequence the election ought to be declared void.

Mr. Justice MELLOR, in his judgment, said as to this: "There is no doubt that the Legislature, when it passed the Ballot Act, did intend that that should be a perfectly secret mode of voting, as far as any instrumentality or machinery which it could provide could make it so. It was new in the English law, it was new in the law of elections, nothing of the kind had occurred before; and therefore when the Legislature for the first time enacted that voting should take place by ballot, and prescribed in very careful language and terms, so far as they could, the precise machinery by which it should be carried into effect, they did intend that secrecy should be preserved as far as it was possible. But when the Legislature was for the first time creating the machinery of voting by ballot, (and there was no then-existing machinery which this could supplement, it was entirely new in its principle and entirely new in its machinery) it was for the legislature to provide the safeguards by which that secrecy should be protected and maintained, and if the Legislature have failed in doing that, the misfortune may be the misfortune of the public, but the fault at all events lies at the door of the Legislature. Now I am satisfied upon the construction of the Ballot Act that a deliberate violation of the provision with regard to secrecy was attempted to be effected in this borough. I am certain that those persons who placed these

ts upon the register which were seen by the Mayor to be
 shily put into the pocket of the personation agent and con-
 l by him manifestly to some persons outside, committed a
 ion of the statutory declaration which they had made, and
 itted an offence within the meaning of the provisions of the
 t Act, thereby rendering themselves liable to serious punish-
 . But that is the only protection which the Legislature has
 ded. They undoubtedly thought that that would be abun-
 y sufficient to secure the secrecy of the election. If it has
 l to do so, it is because it is not possible for any machinery
 invented which shall secure perfectly the object which the
 dature had in view. There is almost always a door left open
 rsons who are willing (as Mr. Leresche has very pertinently
 to run the risk of undergoing any amount of punishment,
 ded they can only benefit their party in an election. As a
 however, I do not think that will often happen, and I do
 ink it would have happened here if the parties themselves
 thoroughly understood the serious consequences which were
 to follow from it. However, it is clear that it was delibe-
 r done, because when Mr. Winder found that it was proposed
 done he remonstrated and protested against it, warning them
 it was contrary to the provisions of the Ballot Act, and there-
 placing them in the condition of transgressing the law inten-
 lly. But, as it seems to me, no foundation for attacking the
 can arise from the act of the personation agent, or any other
 r connected with the election. The punishment is specified
 e Legislature; it must be found within the four corners of the
 of Parliament, and I have no power, neither has the common
 ay power, to supplement any additional penalty upon either the
 ns who transgressed the law or the persons for whose sake
 whose favour such an act may have been done. Upon that
 of the case I entirely concur with what was said by my
 er Martin in his evidence before the Select Committee upon
 ions.* When he was describing what the result would be
 breach of the law, he was asked by Sir George Grey, 'Do
 nean that if it was proved that a candidate had committed

* June 29, 1869.

acts which were illegal and which subjected him to penalties (it is as 'a candidate' there, and I agree that we must read it in the same light in this case as if it had been a candidate, assuming it was one of those things which came within the general law of agency) the judge could take no notice of it, unless it was an act which vacates the seat ?'—and in answer my brother Martin said: 'I think certainly that the mere doing of an act which the Act means to be subject to a penalty, but does not declare to affect the seat, could not by possibility affect the seat.' Now that is the very distinct opinion of a most learned and able judge, whose disposition, as the disposition of everybody who tries to look straight into things would be, is to give effect as far as possible to the provisions of an Act of Parliament; and I take it to be the duty of a judge to take care that he does not fritter away the meaning of Acts of Parliament by any subtle construction, but to give a bold (but at the same time a cautious) decision which shall further rather than defeat the object of any Act of this character. I am satisfied that there is nothing in this Act, however it may affect individuals, which can affect the seat. I grant that it is no great satisfaction to those whose interests may be in some degree affected by acts of this kind to be told that they can prosecute the offenders if they like. Anything more odious and objectionable than throwing it upon private prosecutors to proceed in these matters and prosecute the parties who are guilty I cannot conceive. However, that cannot affect the construction which I must put upon the Act of Parliament. I take this opportunity of saying that I think the Mayor did that which he was bound to do; I think he did the proper thing in the right manner. It is the duty of the returning officer, if he sees anything improper being done by a personation agent, or any person who is admitted for special purposes to the polling station, to see that he does not take advantage of his position to violate the law, and therefore I think he was perfectly justified in what he did and said upon the occasion."

Effect on
election of
payment of
travelling
expenses.

It was proved that the following letter, together with a railway pass, was sent by an agent of the Respondent to a number of voters who lived at a distance from the borough :—

“ Cross and Knowles’ Committee-rooms,
“ Feb. 2, 1874.

“ DEAR SIR,

“ Your name being upon the list of parliamentary voters for this borough, you are entitled to vote at the forthcoming election. We enclose you a railway pass, on presenting which at the station named you will be furnished with a railway ticket to convey you to Bolton and back again. I trust you will be able to make it convenient to come over and record your vote in favour of Messrs. Cross and Knowles.”

This letter was signed apparently by Mr. Hall and Mr. Winder, who were the Respondent’s authorised agents for the election, but it was proved that neither of them actually signed any of these letters, or in fact authorised them to be sent. It was admitted, however, that the letters and passes had been prepared and sent out by a person who was in the position of an agent of the Respondent. It was proved that a certain number of these railway passes were used.

It was submitted by the Petitioners, first, that the sending of these letters and railway passes was either an act of bribery according to the doctrine laid down by the House of Lords in the case of *Cooper v. Slade*,* or a simple act of bribery within the meaning of the Corrupt Practices Act, 1854, s. 2; and secondly, that if it was not an act of bribery, still that it was an illegal act, which had been systematically and wilfully done for the purpose of influencing the election, and that, as such, it ought to be held to have avoided the election.

Mr. Justice MELLOR said as to this, in his judgment:—“ This part of the case involves two questions. First of all, did what was done amount to bribery? Because, if it did, the election is void. If it did not, was it an illegal act, done (as Mr. Herschell opened it) systematically and intentionally with a view to evade and violate the law, the parties being perfectly indifferent as to its legality or otherwise, provided it could only give assistance to the party on whose behalf it was done? Now the first question is, was it bribery? If it could be brought within the doctrine laid

* 6 House of Lords Cases, 746.

down by the House of Lords in *Cooper v. Slade*,* it would be bribery, and would avoid the election *ipso facto*. In that case the House of Lords held that the promise 'If you will come and vote at the Cambridge election for Lord Maidstone and Mr. Slade your expenses will be paid,' was a conditional contract, and, as such, was an act of bribery. Now if the present case is like that, and the *ratio decidendi* of that case applies to this case, what was done in this case must have the same effect, because being an act of bribery it would come within the second section of the Corrupt Practices Act, 1854, and would upset the election. But let us see what the difference here is. The letter in this case was, I think, a most unwise and foolish one. When I heard it read, and after reading the letter in *Cooper v. Slade*, it did appear to me that if it were a question for a jury, a jury would be very apt to find that it was a conditional contract, like that in *Cooper v. Slade*. But the meaning of a letter is a question of construction for the Court; it is not a question upon which a jury (if there was one in this case) would have to decide; and therefore as a court of law I must consider this document. It is clear that this letter was written by persons who must be considered as agents of the Respondent, therefore if this letter, and what took place upon it, amounted to bribery, the Respondent must be unseated. But I think it does not. I think this is not a conditional promise at all. Undoubtedly the person who received this letter, together with a railway pass, might have put it into the fire if he had pleased; he might have used it, or he might not, just as he liked. All control over that railway pass was gone when it left the office of the Respondent's agent. That is how it stands. So far as it is in any sense a conditional bargain, or can be called a bargain at all, it is a bargain entirely one-sided—I put myself in your power, I send you a piece of paper to take you to Bolton and back again. To make it like the case of *Cooper v. Slade*, it should be a conditional promise—if you will come and vote for the Respondent the expenses of obtaining a railway ticket will be paid; that would no doubt have brought it within the case of *Cooper v. Slade*. But, as it appears to me, it was not

* 6 House of Lords Cases, 746.

a bargain of that nature, and that the voter was not bound by any other consideration than an honourable one, that is to say, this is sent to me that I may go to poll, if I were to take advantage of the opportunity afforded by this ticket not to vote, but to go to Bolton on my own business, or to vote for the other side, I should be doing a shabby thing; that appears to me to be the only sort of obligation, something arising from the idea of honour or good faith by which a voter receiving such a pass might be affected. But it is entirely free from that question which was the turning point in *Cooper v. Slade*. If he had voted for the other candidates, could they have recovered back the value of this pass from him? They could not. He was under no other obligation by accepting that pass than that which his own sense of honour might dictate; he was under no legal obligation whatever, and therefore it is not, in my opinion, within the case of *Cooper v. Slade*. Now I think the law as laid down in *Cooper v. Slade* is the governing law, except so far as it is affected by the provisions of 21 & 22 Vict. c. 87. *Cooper v. Slade* having laid down that very hard rule (for it was not pretended that a farthing was given beyond the actual expenses), the suggestion was made by one of the learned judges during the decision that if the Legislature thought their decision a hard one they might interfere. Accordingly the Legislature did interfere, and passed the above-mentioned Act of 21 & 22 Vict. c. 87, by which it is enacted that a candidate or his agent 'by him appointed in writing' may provide conveyance for any voter for the purpose of polling at an election. The Legislature were careful to provide that it should only be done by an agent appointed in writing, and the object undoubtedly was to guard against abuse. That enactment was intended to interfere to some extent, not probably to the extent of directly legislating upon the doctrine of *Cooper v. Slade*, but it was intended to provide, without danger to the election, for the conveyance of voters. That applied both to county and borough elections alike, and the interpretation which has always been put upon that section (I do not mean the judicial interpretation, because I am not sure that the question has ever arisen), but the general practice of all persons connected with county elections, and (up to the passing of the next Act of Parliament) with borough elections, with regard

to out-voters, has been to provide them with railway tickets to come up and poll, and to return after they have polled. But so careful was the Legislature to guard against money being given that they say,* 'but it shall not be lawful to pay any money or give any valuable consideration to a voter for or in respect of his travelling expenses for such purpose.' Therefore, although they allowed the agent appointed in writing to provide means of conveyance, they would not allow any money to be paid to a voter in respect of his travelling expenses for such purpose. Now this is mentioned with regard to Mr. Leresche's argument upon the question of bribery, because he says that this comes within the 2nd section of the Corrupt Practices Act quite independently of the doctrine laid down in *Cooper v. Slade*, as an offer of a valuable consideration to a voter in respect of his voting. Now if that is so, it applies both to county and borough elections, and every one of such railway passes would be a 'valuable consideration,' the object being to get people to vote. That would be so strange a construction of the words 'valuable consideration,' as applied to the other words of the section, that I should only come to that conclusion in case I found myself coerced by legal considerations to do so. It is difficult to see in what it can be a valuable consideration to a voter. The coming to vote and voting may be so deemed by the sender; he may think that he gets value, but it is difficult to see what value the voter gets by a free pass to the poll. That is the state of the law as it stood up to the time of the passing of the Reform Act, 1867. By that Act the Legislature extended enormously the constituencies of boroughs in England, and it very likely struck the Legislature that this extension would probably give occasion for an enormous expenditure in conveyances for bringing up voters to the poll. Therefore they determined to make a difference between county and borough elections, and what they did was to say, 'We will make a distinction in the case of borough elections. We did think it right after the decision in *Cooper v. Slade* to permit the agent of the candidate to provide conveyance in the case of voters generally, but now we will only allow that to be done in the case of county elections; we will not allow it to be done in all borough elections.' Therefore s. 36 was

* 21 & 22 Vict. c. 87, s. 1.

inserted in the Reform Act, 1867. Now, when we refer to s. 2 of the Corrupt Practices Act, 1854, which is a most comprehensive section, and which, I believe, was made to comprehend every existing definition of bribery, we find that it enacts what shall be bribery. The Act also enacts (in s. 23), that certain payments which it prohibits shall be illegal payments, and it subjects a person who offends either against s. 2 or s. 23 to a penalty. Now it must strike every one that if the Legislature had intended to enact in s. 36 of the Reform Act, 1867, that this payment for conveyance of voters should be punishable as bribery, nothing would have been easier than for them to have said it shall be a corrupt practice within the meaning of the Corrupt Practices Act, 1854. They do refer to the Act; they say that it shall be deemed an illegal payment within the meaning of it, but, as I have said before, if they had intended it to be made bribery, nothing would have been easier than for them to have said so. Looking at that Act of Parliament, I should have said that that omission was intentionally made, and I can quite understand their not making it bribery, because it does not come within the common notion of bribery as an immoral and corrupt thing. And also, judging from what we historically know, I am satisfied that the words were intentionally framed as they exist in the statute. I do not say that a judge could act upon historical evidence when he found the words clear, yet when I am asked to decide that the words of the statute, which enact that this should be deemed to be an illegal payment, should have a more extensive meaning than that, I look to the words to see whether they compel me to say so, and I come to the conclusion that they do not. Do they convey an inference to the contrary? I think they do. One member of Parliament proposed to enact as an amendment to the Bill that this should be a corrupt practice within the meaning of the Corrupt Practices Act, but that was negatived by the Legislature, and they refused to enact it. Therefore, historically speaking, I am quite satisfied that the construction I am putting upon s. 36 of the Reform Act, 1867, is the correct one, though I should not have been influenced to arrive at any other construction by any historical idea of what had taken place while this bill was before Parliament.

Effect of
illegal act de-
liberately done
to influence
election.

“ There remains only one other point, which I agree is a serious point, and it is one that was discussed by my brother Martin in the Salford case,* which is not exactly like this, but is a kindred case, where the payment was for cabs. My brother Martin intimated upon that part of the case that if he found it was done intentionally and wilfully in violation of the law, not that he should decide that it would upset the election, but that he should think it a case to be considered further by the Court of Common Pleas. I am not sure what would have been the course I should have adopted if the present case had come up to the hypothesis of my brother Martin (which it does not)—namely, that it was a systematic and general violation of the law to a very considerable extent, and was done wilfully and designedly by an agent for whom the candidate was responsible, because my own opinion is very clear upon the matter. I agree with the opinion of the late Mr. Justice Willes; he was decidedly of opinion that a violation of an Act of Parliament which itself created the offence and provided the penalty could not avoid the election; all it did was to inflict penal consequences upon the persons who did the acts. That also is in exact conformity with the evidence given by my brother Martin to which I have already referred, and it is also, I know, the opinion of my brother Bramwell, for when I communicated with him upon the point of the telegram,† I took the opportunity of asking his opinion upon this particular point, and in the answer which he gives me he entirely goes the length of Mr. Justice Willes, and entirely concurs in the view I have taken of the effect of s. 36 of the Reform Act, 1867.”

Mr. Justice MELLOR, in his judgment, declared the Respondent duly elected.

Costs.

As to costs he said :—“ If this had been an ordinary case, if one side had been clearly right, and the other side had assailed the seat without reasonable foundation, I should have made the cost follow the event as a matter of course—that is my invariable practice. But in this case, while I wish to be understood as fully believing that the sitting member himself is wholly free from

* Vol. i. p. 133.

† Ante, p. 140.

blame, his agents have done what I consider to be an illegal act. They deliberately violated the plain intention of the Ballot Act. Again, I think that incurring the liability of those railway passes was contrary to law, although I acquit the sitting member and his agents in this matter of any intention of violating the Act at all ; it was a mistake in point of law, and a mistake which it was not unnatural for the Respondent's agent, Mr. Winder, to make, he having been asked a question on the subject, and referring to a book * as an authority which he acted upon. We know it is very often said it must be true because it is written in a book. Mr. Winder seems to have acted a little under that impression, and to have acted upon the idea that books are infallible guides. People must take care that they do not rely upon these books too strongly. Under these circumstances, as there were two acts undoubtedly done by the agents of the Respondent which did, as it appears to me, invite a petition, that is to say, which might very fairly be considered by the persons who were advising the Petitioner as acts which not only were illegal, but might avoid the seat, I think that with respect to these two matters the Respondent must bear his own costs. But with regard to those individual cases of bribery which have entirely failed, so far as the costs are applicable to those cases, I think the Petitioners must pay them.

* It appears from his evidence that the book he referred to was Cox and Grady's work on Registration and Elections.

CASE XXV.
COUNTY OF NORTH DURHAM.

BEFORE MR. BARON BRAMWELL, MAY 25, 1874.

Petitioners : Burdon and others.

Respondents : Mr. Isaac Lothian Bell ; Mr. Charles Mark Palmer.

Counsel for Petitioners : Mr. Hawkins, Q.C. ; Mr. Serjeant Ballantine ;
Mr. Giffard, Q.C. ; Mr. A. L. Smith ; Mr. Gorst ; Mr. E. L. O'Malley ;
Mr. Milvain.

Agents : Mr. H. E. Brown ; Mr. R. Simey ; Mr. S. L. Owen.

Counsel for Respondents : Mr. Serjeant Parry ; Mr. Herschell, Q.C. ;
Hon. E. Chandos Leigh ; Mr. Hugh Shield ; Hon. E. Lyulph Stanley.

Agents : Messrs. Hoskins and Wyatt.

THE petition contained the usual allegations of corrupt practices by agent, and also an allegation that the election was void on account of general riot and intimidation.

Admissibility
of statements
made by third
persons.

In the course of the case,

A witness who had been employed to canvass against the Respondents was asked by Mr. *A. L. Smith* for the Petitioners,

Q.—When you canvassed the tradesmen, what was the feeling you found among them ?

A.—I found a reluctance to promise, and certain of them told me if they voted——

Mr. Serjeant *Parry*, for the Respondents, objected to this, as not being admissible. He submitted that the tradesmen them-

s must be asked if it was sought to prove that they had been
ly influenced.

∴ **Baron BRAMWELL** :—“ I should be sorry to admit evidence
e myself that would not be admitted by a judge sitting with
y, because it is idle to suppose that he is not influenced by
ame feelings as jurymen. But after the trained life one has
of considering questions of this kind, I do not think there is
a danger. I think you are at liberty to ask the question as
nerals, but you may not ask as to particulars. You may ask
general question, whether he found any particular difficulty
tting promises in a particular district, and if so, whether he
attribute it to any cause ? ”

witness was asked as to an act of intimidation alleged to
been committed by one Woodman, whose name was not in
articulars.

Reception of
evidence when
name not in
list of parti-
culars.

∴ *Serjeant Parry*, for the Respondents, objected to this
nce on the ground that no particulars had been furnished as
oodman.

∴ *Giffard*, for the Petitioners, submitted that although Wood-
s name was not specifically mentioned in the list of persons
ed to be unduly influenced, still, that it was included in the
ving words, which were added at the end of the list : “ also
dent, delegates, the council, and other officers of the Dur-
Miners Association.”

∴ **Baron BRAMWELL** :—“ That certainly comprises Woodman.
comes rather within the sort of rule I laid down at
lsor against you, Mr. Giffard, namely, that there was a class
ed at, and this is one of the class. I do not think it will
dice you, brother Parry, if I admit this evidence, as the man
the neighbourhood, and you can call him.”

∴ *Herschell*, for the Respondents :—“ It comes to this, that
ulars are to be treated as though there were no particulars
l. Particulars are ordered; you give 150 specific cases, and
ame a class including 40,000.”

∴ **Baron BRAMWELL** :—“ You are quite right, these unhappy
culars are always a snare, either to the man who gives them,
e man who receives them, and sometimes to both. As far

as this particular case goes I will not strike his evidence out yet. If any detriment should arise from it we will endeavour to remedy it. If there are many more examples of this sort I shall be inclined to think that it is the result either of carelessness or worse, and the Petitioners must take the consequences."

Account of expenses filed by unsuccessful candidate when evidence.

A clerk from the Returning Officer's office was called by the Petitioners to produce the account of election expenses which had been filed by the Respondent. After producing it, he was asked in cross-examination by Serjeant *Parry*, for the Respondents, to produce the account of expenses which had been filed by the unsuccessful candidates.

Mr. *Hawkins*, for the Petitioners, submitted that it was not admissible. He asked whether the Respondents proposed to put them in as part of their case?

Serjeant *Parry* :—" Yes ; certainly."

Mr. *Hawkins* :—" The seat is not prayed ; and, besides, the unsuccessful candidate is not a petitioner in this case."

Mr. Baron BRAMWELL thereupon held the evidence inadmissible.

After a number of witnesses had been called in support of the various allegations contained in the petition,

Mr. Baron BRAMWELL inquired whether the Respondents thought they would be able to rebut the charge of general intimidation. He said he was anxious for information on this point, as he gathered from the cross-examination that the general intimidation was not denied.

Mr. Serjeant *Parry*, for the Respondents, asked for time before answering the question.

The Court then adjourned, and the learned judge had a conference in private with the Petitioners' and Respondents' counsel.

Upon the reassembling of the Court—

Mr. Baron BRAMWELL said :—" The learned counsel and myself have been talking this matter over together. What I am about to say has already been said between Mr. *Hawkins*, my brother *Parry*, Mr. *Herschell*, and myself, but I think it desirable

that I should state publicly what passed between us. It is that whatever arrangement may be come to between the parties it is my duty to consider and determine whether I ought to declare the Respondents guilty of corrupt practices by themselves or their agents. Supposing no further evidence were given on either side it would be my duty to act upon that which has been already given, as of course if those who could contradict the evidence, if it were untrue, do not think fit to contradict it, the conclusion is that it is true. Now, undoubtedly there is evidence, as the case at present stands, as to bribery, treating, and undue influence by agent. Therefore I desire to intimate publicly that if the matter stops here I must not only declare the election void on the ground of general intimidation, but I must also declare it void on the ground of corrupt practices by agent. I have only one word more to add, namely, that it was in the interest of the parties, and by way of saving expense, that I asked what I did yesterday, and if the Respondents should tell me that they can answer the case of general intimidation that has been made out I can undertake for myself to say that I shall attend to it as though I had not indicated anything like an opinion yesterday.

Mr. Serjeant *Parry* then stated that since the day previous the Respondents had fully considered the subject of general intimidation, and they felt that it was utterly impossible to alter the facts that had been proved to the Court. But that as to the charges of corrupt practices by agent he was prepared to call evidence to rebut them.

Mr. *Hawkins*, for the Petitioners, then stated that, as one of the main objects of the petition had been accomplished by the declaration that the election was void on the ground of general intimidation, he did not propose or think it right or proper to prolong the inquiry by calling any more evidence. If the Respondents thought it right to call evidence to rebut the allegations of corrupt practices by agent, he should not think it his duty to prolong the inquiry, and add to its expense by cross-examining them. He must not however be taken to admit the truth of any contradictions they might think it right to make of witnesses he had called, or to abandon the evidence already given.

Mr. Baron BRAMWELL:—"I must say upon the fullest consideration I can give to the matter that you are not here in the nature of a public prosecutor, therefore if you do not choose to cross-examine the witnesses merely because you are not interested in the result. I do not see that anyone can blame you, or that I ought to attempt to make you do it. But I give very distinct warning that if no one else does, I shall do so to the best of my ability: ~~in fact~~ I must do so, as I have to adjudicate as to which of the two I believe."

Evidence was then called by the Respondents to rebut the charge of corrupt practices by agent.

Mr. Baron BRAMWELL, in his judgment, declared the election void on the ground of general intimidation, but stated that the charge of corrupt practices by agent was rebutted by the evidence which had been given on behalf of the Respondents.

What under
intimidation
within the
provisions of
the Act,
1854.

As to what evidence is necessary to bring a case of undue influence within the operation of the Corrupt Practices Prevention Act, 1854, s. 5, he said:—

"When the language of the Act is examined it will be found that intimidation to be within the statute must be intimidation practised upon an individual. I do not mean to say upon some one person only, so that it would not do if practised upon two or a dozen, but there must be an identification of some or more specific individuals affected by the intimidation, I will not say influenced by it, but to whom the intimidation was addressed, before it could be intimidation within the statute, otherwise it comes under the head of general intimidation."

As to general intimidation, he said:—

General in-
timidation dis-
counted

"I take it that the law is this: first of all, there is the statutory intimidation, that contemplated by the statute, if one may use such an expression, that is, an intimidation contemplated by the statute which avoids the seat, where a candidate or his agent is guilty of it. But besides that there is another intimidation that has been called a common law intimidation, and it applies to a case where the intimidation is of such a character, so general and extensive in its operation that it cannot be said that the polling was a fair representation of the opinion of the constituency."

intimidation was local or partial, for instance, if in this case been limited to one district, as Hetton is, I have no doubt in that case it would have been wrong to have set aside this on, because one could have seen to demonstration that the could not possibly have been brought about by that intimi-
 and that the result would not have been different if it had existed. I do not mean the result of the polling in that ular district, but the general result of the majority for the ndents. But where it is of such a general character that result may have been affected, in my judgment, it is no part e duty of a judge to enter into a kind of scrutiny to see er possibly, or probably even, or as a matter of conclusion the evidence, if that intimidation had not existed, the result have been different. What the judge has to do in that case ay that the burden of proof is cast upon the constituency e conduct is incriminated, and unless it can be shown that oss amount of intimidation could not possibly have affected sult of the election it ought to be declared void. Now in ons of this sort one must look not only to the amount of idation, but to the absolute majority which has been ed. It was the opinion of Mr. Justice WILLES,* and I e it is not inconsistent with the opinion of Mr. Justice H,† as expressed in that celebrated and most useful judgment he gave in the Galway case, that you are to look at the ble effect of intimidation, which consists of two things, the t and operation of the intimidation, and the majority which tting members got. Now, I think if it were otherwise, and e were told that partial intimidation would avoid an election, gh it were certain that it had not affected the result of the on, the consequence would be that a few mischievous persons upset every election. On the other hand, if one were ed to go into a kind of scrutiny the consequence would be one might make a very great many mistakes ; besides, I am inion that, where there has been so large an amount of idation that it is uncertain whether the result would have the same without it, it cannot be said that the election was or that it represented the real opinion of the constituency,

* *Semble*, Westbury, Vol. i. p. 50.

† *Ante*, p. 57.

but that it must be held void on account of that uncertainty. Now, was there such general intimidation here? I have no doubt that there was. Here we find it prevailing not in one place only, it is not local, we find it prevailing at Hetton, Coxhoe, Seaham, Hartover, Durham, and to some extent at Lanchester. How is it possible to say under these circumstances with certainty that the result was not affected by this intimidation. So far from being of that opinion, I doubt extremely when I look to what the majorities were, whether the result would have been different if the election had been free and fairly conducted.

“ Now, the intimidation that existed at these places was of two kinds, one more venial than the other. The more venial kind was the intimidation which consisted in threatening voters that they should lose custom if they did not vote in uniformity with the wishes of their customers. As Mr. Justice WILLES said,* I am not sure that that is actually unlawful; in fact, I am of opinion that it is not actually unlawful. I suppose it is open to a man to say, ‘I choose to deal with you not in accordance with the merits of the commodities you sell to me, but according to your politics on one side or the other.’ And I suppose if one man can do this, fifty men may do it. But do not let a mistake be made. Though it is not unlawful in the sense of being punishable, like violence, yet it has undoubtedly this characteristic of illegality about it, namely, that if, as in this case, it prevails to a large extent, it frustrates the object of those who are guilty of it, and though it may not be unlawful it is a thing to my mind most earnestly to be deprecated. And if I wanted an authority for this, I could not cite a better, or one who would have more weight with the men who have been guilty of it, than that man who said he had thought it wrong to interfere with voters ever since he knew what liberty was. And I cannot help citing a case, in the hope that my citation may do some good to those who are interested in this matter. About six weeks ago I tried an election petition at Windsor. There a man, a person of property, in consequence of the election which took place in 1868, turned about twenty of his tenants out of their houses for no other reason than because they had acted according to their

* *Semble*, per Blackburn, J., North Norfolk, Vol. i. p. 241.

sciences, and voted in opposition to him, he being a candidate. I am sorry to say I could not unseat him for it, for this reason, that I could not trace that the intimidation was in operation at the time of the election in 1874, because it did not appear that he had done anything to coerce the people and get their votes, or that he had repeated the threat which had been uttered to them, although no doubt the ballot afforded them protection. But why I have made this case is not so much for the purpose of making this reservation upon it, as for the purpose of asking those who have been guilty of this kind of conduct here what they would think of this conduct. Do they approve of it? Would they think it right in the case of a landlord of a large number of cottagers that he should turn them all out, although they were respectable and had paid their rents, for no other reason than that they did not hold political opinions in conformity with his? I may say that there is a difference between the two cases. What difference is there between the case of a landlord who will not have a man for his tenant, and a customer who will not have another for his grocer, butcher, or publican, because he held different political opinions? Absolutely none. Of course one does not ask the people for that which one knows cannot be got, and there is no use exhorting people to be better than human nature is capable of being. It is a question between two persons. I do not at all see why a customer should not deal with a red, if he is himself a red. You must choose one, and I do not see any harm in that. But where friendly relations have subsisted between two people, and the customer is satisfied with the tradesman and the tradesman with the customer, that they should quarrel and fall out and part company because they do not hold the same political opinions is highly to be deprecated, and I exhort them to remember what was said by one of their own body, that it is wrong for anybody who knows what liberty is. It is due to them that I should say one thing, which is, that they have not been nearly so bad as they threatened to be, for, with only one exception, none of the tradesmen who were called, have said that their threats have been carried into execution, or at all events, if they have been, the customers all of them afterwards repented and came back. Nevertheless this kind of intimidation did exist

to a very considerable extent, and to the extent to which it did exist it prevented the election being a free one.

Now, the other intimidation is of a different character. It was proved that the committee-room at Hetton was wrecked, that the police-office was stormed and the prisoners liberated, that the vicar's house and other houses were attacked, that savage violence was used at Seaham Harbour, that a number of men were ill-treated, and a conveyance flung over the cliffs. Such a state of things having been proved it only remains for me to say formally what I stated before, namely, that this election is avoided on account of general intimidation. It may be hard upon the Respondents, and it may be hard upon that part of the county which has not misconducted itself that it should have the worry of an election to go through again with possibly a different result, but the only way to get rid of this kind of offence is to visit the consequences of it upon those for whose benefit it was committed. The intimidation cannot be punished, and it follows as a sort of consequence that with the view of preventing similar practices the election must be declared void.

Costs.

Costs followed the event.

CASE XXVI.
BOROUGH OF BOSTON.

BEFORE MR. JUSTICE GROVE, JUNE 1, 1874.

Petitioner : Mr. Malcolm.

Respondents : Mr. William James Ingram and Mr. Thomas Parry.

Counsel for Petitioner : Mr. Hardinge Giffard, Q.C. ; Hon. A. Thesiger, Q.C. ;
Mr. Cave.

Agents : Messrs. Collyer and Bristowe.

Counsel for Respondent Ingram : Mr. Hawkins, Q.C. ; Mr. J. O. Griffiths.

Agent : Mr. W. Ford.

Counsel for Respondent Parry : Mr. Serjeant Ballantine ; Hon. E. Chandos Leigh ;
Mr. Mellor.

Agents : Messrs. Wyatt and Hoskins.

THE petition contained the usual allegations of corrupt practices, and prayed the seat for the Petitioner.

In the course of the case,

It was proved that the Respondent Parry had formerly represented the Borough in Parliament, and was intending to become a candidate again at the next election, that he lived in the neighbourhood, and was in the habit of giving largely to the local charities through the medium of other persons, and of entrusting sums of money to the clergy and other persons to distribute among the poorer classes. That in the course of the December preceding the election the Respondent Parry, without consulting any one else on the subject, determined in his own mind to make

Charitable gift,
when a corrupt practice.

a distribution of coals among the poor in the Borough. He accordingly wrote to a person named Wright the following letter :—

“MY DEAR WRIGHT,—

“I have been in the habit of sending a small gift to your Mayor and another to the Vicar, about this time of year, but the weather has become suddenly so seasonable and sharp that I think I can best help the poor people by a direct gift in coals. My trouble is in the arrangements needful for such an end, and in finding friends willing to interest themselves to distribute 100 or 120 tons of coals at once. The selection of recipients need not be political, nor be confined to the mankind, widows and deserving poor people of all classes may be thought of. I do not mind if you go up to 150 tons, but that will be my limit. Harris, if he be in the coal trade, may supply a third, and I think Turner and Ridlington also a third. You will perhaps enlist some persons to help you, and issue tickets or take other means to carry out this gift to warm these poor people’s firesides. This need not be made public, nor, as I have said, need it be political. Dyer will help, and so I think will Mr. and Mrs. Bailey. Do the best you can, distribute the coals, and send the account to me.”

The Respondent himself did nothing more in the matter, and heard no more about it until after the election, but what actually took place was as follows. Instead of the coals being distributed as the Respondent Parry had intended, to the poor of the district, cards were printed, without his knowledge, and bearing the signature of one Dyer (who acted subsequently at the election as the Respondent’s agent for the election expenses) with these words on them, “Please deliver cwt. of coals to [A. B.]. For Thomas Parry, B.B Dyer ;” and on the back of the cards were the words, “With Mr. Parry’s compliments.” These cards were distributed in the course of the month of January (but before it was known that an election was imminent) to a large number of persons, some of whom were voters and some not.*

* These facts, so far as they are not mentioned in the learned judge’s judgment, are taken from the shorthand writer’s notes of the evidence given by Mr. Parry and Mr. Dyer.

Mr. Justice GROVE, in his judgment, as to this said as follows :—

“ There are two questions involved in this distribution of coals with regard to the Respondent Parry. First of all, was this distribution made by him with the intention of, in legal language, corrupting the electors? It is not necessary for the purpose of what is called ‘corrupting’ the electors, taking the expression in its legal sense, that the word ‘corrupt’ should have a criminal sense attached to it. It has been over and over again held* that an unfair and improper donation with the view, motive, and intention of securing a vote is corrupt within the meaning of the Corrupt Practices Act, 1854. It might be a doubtful question (and it is one which was discussed in the Windsor case†) whether, assuming two motives to exist, the one being pure, and the other with the intention to corrupt, you could exclude the corrupt intention, and rely wholly upon the pure intention. I think that must be rather a question of degree. A man may wish to be charitable in a neighbourhood, but at the same time he may have an eye to his own interests, and there must be in fact some limiting line, incapable of being defined in words, where the two things come to a nearly equal balance. We know, for instance that persons looking forward to be candidates for Parliament are generally pretty liberal to the charities in the district, and such liberality, so far as I am aware, has never been held to vitiate the election; I suppose upon the grounds that such persons do not select voters, as contradistinguished from non-voters, as the objects of their charity, that the object itself is good, and that although the donors may, in so bestowing their charity, look to their personal interests and personal ambition, still a man is not to be injured in an object of personal ambition merely because he does good, which perhaps without that stimulus he might not have been induced to do. If the time at which the late dissolution would take place had been well known, if it had been a certainty that Parliament would be dissolved on January 26, and if the donation had been made on January 14, with that knowledge, I must say that I do not think I could have come to any other conclusion than that it was a personal act of corrup-

* See cases collected in Bushby on Elections, ed. 4, pp. 130—132.

† Ante, p. 89.

tion on the part of the defendant, or, at least, I should have been very much oppressed with the matter. That, however, was not the case. Mr. Parry says (and I certainly accept his statement, confirmed as it is by what was the almost universal impression at the time, as to the probability or otherwise of an immediate dissolution) that he thought that Parliament would continue to exist, at all events, long enough for practically completing the business of the Session, and that it would be dissolved in August or possibly a little earlier. Mr. Parry tells us that he formerly represented this borough, and that he has constantly been looking forward to becoming a candidate again, that he has been in the habit of giving largely to the local charities, and that he gave this coal by way of administering charity, but he expressly negatives that he in any way selected voters, or those who might be voters, as the objects of his charity, and he declares that his gifts were, in fact, gifts to the poor, and that he put them for distribution into the hands of Mr. Wright, into whose hands he had previously put other things to distribute. When we look at these things in the light of the then existing events, it seems to me that there is not much difference between this Christmas gift and previous subscriptions to charities or gifts of money to clergymen for the poor generally, and certainly I do not think I ought to assume that which the evidence does not fairly bear out, that is to say, that it was necessarily corrupt, when a reasonable motive may be assigned which is consistent with Mr. Parry's previous acts. I am far from saying that I do not think that Mr. Parry had in view making himself popular in his candidature for the borough, that is to say, that he was more liberal in these subscriptions than he would have been if he had not been looking forward to being a candidate. I think it is necessary to say that my mind is not altogether free from a doubt in this particular case, and although, under the circumstances, I do not now hold that Mr. Parry is personally guilty of a corrupt practice within the meaning of the Act, I am by no means certain that in a subsequent case, coming next year or at some other time, I might not so hold upon precisely the same facts. It is as well that the public should know that when a judge pronounces an opinion upon a certain state of facts, he takes into considera-

tion the existing state of knowledge and the existing circumstances, but when upon a second occasion persons seek to avail themselves of that ruling, and think that they can do a wrong act, simply trying to keep within the particular facts which upon the former occasion were held not to be corrupt, they frequently do acts which must be held to be corrupt. It may be that upon precisely the same apparent state of facts, an act which is not held corrupt at one time may be held corrupt at another time, because knowledge goes on, and if the second act is a mode of effecting a corrupt purpose, merely getting out of a judicial decision upon the previous state of circumstances, then that which in the first instance is not corrupt would in the second instance become corrupt. It is well that persons should know that these matters must depend upon the circumstances, and that people cannot successfully evade the law by simply, as they think, getting out of the terms which the judges use in their expositions of the law. There are neither in the English language or in any other language, terms which can be used which will exclude all possible conclusions but one; I am therefore anxious, in giving this decision, merely to say that it has not been established to my satisfaction, that there has been, under the circumstances, any personally corrupt act committed by the Respondent.

I shall now state my opinion as to the effect upon the election of the conduct of others for whose acts the Respondent Parry is in law responsible. Instead of the coals being distributed, as the Respondent intended them to be, to the poor of the district, certain cards were printed without his knowledge, and bearing the signature of Mr. Dyer, who was subsequently, if not at the time of the distribution, Mr. Parry's agent for election expenses. Mr. Dyer took a very active part with reference to the election, and he distributed the cards which we have seen. When Mr. Parry was asked by Mr. Giffard whether the card did not look very much like an electioneering canvassing card, Mr. Parry said, "I will not assert it," but he does not negative Mr. Giffard's question. Nobody can say that this looks like a charitable distribution. Those cards were given to people, a great number of whom were in the class of voters,

Effect of acts
of agent.

and although they were given to a great many who were not voters, I have no doubt at all that this gift of coals was made use of by Mr. Dyer, and possibly by others who were promoting Mr. Parry's election, for the purpose in plain language of getting their votes. If so, that was a corrupt act within the meaning of the Corrupt Practices Act. There was a good deal in the evidence that I might go through, but there is ample evidence to satisfy me that although Mr. Parry may have intended it generally as a charitable gift, and with the view of making himself popular by charitable gifts, yet in the hands of those who acted for him it was made an agency for getting votes for him. It was therefore corrupt within the meaning of the Statute, and by that act, for which the Respondent Parry is responsible, he is unseated.

Contempt of
court.

It was proved that after a witness named Lill had given his evidence, and as he was leaving the court, one Symes, as Lill was passing him, called him "a bloody thief." Symes was in consequence ordered to appear in Court. On his appearance—

Mr. Justice GROVE read over to him the evidence of Lill as to this matter, and asked him what he had to say in answer.

Symes admitted the truth of the charge, and humbly begged his lordship's pardon.

Mr. Justice GROVE then said, that as he had apologised and stated that it was the effect of temper he would treat him leniently, and content himself with fining him five guineas.

Mr. Justice GROVE in his judgment declared the election of the Respondent Parry void on account of bribery by agent, and reserved for the Court of Common Pleas the question whether the election of the Respondent Ingram was void also in consequence of his joint candidature with the Respondent Parry.*

Effect of
coalition.

As to the effect upon the Respondent Ingram of his coalition with the Respondent Parry, he said as follows :—"The general

* This case has not as yet been argued.

question will be this. The law has decided that a candidate at an election is responsible for the acts of agents, who are not, and would not necessarily be, agents under the common law of agency. At common law a person is only responsible for such acts of his agents as are within the scope of the authority which he has given to those agents. For instance, if I authorise a man to buy a horse for me, I am responsible for his conduct about the purchase of that horse, but if that man, whom I tell to buy a horse for me, goes and sells a farm of mine I am not responsible for the act. That is putting it in a very simple form; but with regard to election law, the matter goes a great deal farther, because a number of persons are employed for the purpose of promoting an election, who are not only not authorised to do corrupt acts, but who are expressly enjoined to abstain from doing them, nevertheless the law says, that if a man chooses to allow a number of people to go about canvassing for him, generally to support his candidature, to issue placards, to form a committee for his election, and to do things of that sort, he must, to use a colloquial expression, take the bad with the good. He cannot avail himself of these people's acts for the purpose of promoting his election, and then turn his back, or sit quietly by, and let them corrupt the constituency. Therefore the law carries the responsibility of a Member of Parliament for the acts of the agents, who are instrumental with his assent in promoting his election, a good deal farther than the mere common law of agency. Then comes the question in this case, whether the Respondent Ingram was assenting in the beginning of December to a coalition with the Respondent Parry, whether he made Mr. Parry, so to speak, his agent, or made Mr. Parry's agents his agents, or whether he has made a joint committee (if such an one was established to carry on both elections) his agents. That is a new question of law upon which there is a good deal to be said. On the one hand, it may be asked, why is a man to be less the agent of a member because he happens to be a co-candidate with him, than if he were not a co-candidate with him? On the other hand, it may be said that a man is not so responsible for all the acts of his co-candidate as he would be for the acts of another agent,

because the co-candidate has his own interests to look after. It seems to me to be a fairly arguable point, and that point I shall reserve for the Court of Common Pleas.

Costs.

As to the costs he said, "The costs of that portion of the case which is reserved will follow the judgment that will be given by the Court of Common Pleas; this was so in the Launceston case, and the Court has clearly the power to do this under s. 41 of the Parliamentary Elections Act, 1868. The costs of the petition, so far as relates to the unseating of the Respondent Parry, must follow the result."

The Respondent's counsel then withdrew from the case, and the claim to the seat was gone into.

Mr. *Giffard*, for the Petitioner, submitted that on proof that a voter had received a gift of coals from the Respondent's agent, and that after having received the gift the voter had voted, he was entitled under s. 25 of the Ballot Act* to require the judge to strike off one vote on account of each such voter.

Mr. *Chandos Leigh*, instructed on behalf of a number of the voters for the borough, consented to the evidence being so given and to abide by the result of a case stated for the Court of Common Pleas.

The Registrar of the Court was then sworn, and the marked register, the counterfoils, and the ballot papers were, by the direction of the judge, brought into Court.

After a sufficient number of votes had been struck off to place the Petitioner in a majority of two votes—

Mr. Justice GROVE said as follows: "The majority is merely nominal because there were no doubt a large number more who received these gifts of coals. Supposing that the Court of

* Section 25 is as follows: "When a candidate on the trial of an election petition claiming the seat for any person is proved to have been guilty by himself, or any person on his behalf, of bribery, treating, or undue influence in respect of any person who voted at such election . . . there shall on a scrutiny be struck off from the number of votes appearing to have been given to such candidate one vote for every person who voted at such election and is proved to have been so bribed"

Common Pleas are of opinion that enough has been done by proving the receipt of what I have held to be corrupt gifts, that establishes the seat for the Petitioner. On the other hand, if they consider that it is not enough, then it will be a void election, and there will be a new election.*

* The special case stated and the judgment of the Court of Common Pleas thereon are reported in *Malcolm v. Parry*, L. R. 9 C. P. 610.

CASE XXVII.
BOROUGH OF KIDDERMINSTER.

BEFORE MR. JUSTICE MELLOR, JULY 6, 1874.

Petitioners : James Youngjohns and Charles Thomas.

Respondent : Mr. Albert Grant.

Counsel for Petitioners : Mr. Charles Russell, Q.C. ; Mr. Chandos Leigh ;
Mr. Bowen.

Agents : Messrs. Cooke and Talbot.

Counsel for Respondents : Mr. Hawkins, Q.C. ; Mr. Morgan Howard, Q.C. ;
Mr. Biron ; Mr. Montagu Williams.

Agents : Messrs. West and King.

THE petition alleged that the Respondent by himself, by his agents, and by other persons on his behalf, was guilty of bribery, treating, undue influence, and personation before, during,* and after the election.

5. “ That the Respondent by himself and his agents, before and at the date of the said election, corruptly made divers promises of money, meat, drink, provision, and other reward, in order to induce voters to vote and to refrain from voting.

6. “ That general bribery, treating, and undue influence were practised before, during, and after the election.

7. “ That after the election and return, and within 28 days before the presentation of this petition, that is to say, on a certain

* It may be observed that the words “ before ” and “ during ” were struck out of the petition in the Brecon case, ante, p. 43, by order of Lush, J., at chambers. See *Times* newspaper, April 22, 1871.

lay believed to be the fifth day of May, 1874, payment of a sum of money was made by the Respondent to one Jefferies, to wit, £1000, in respect of corrupt promises as aforesaid, and in pursuance and furtherance of the corrupt practices hereinafter alleged."

Then followed allegations similar to the last with respect to the payment of other sums of money to other persons, and also allegations with respect to the gift to certain persons, and to other persons at present unknown, of meat, drink, provision, and entertainment, and a final allegation, numbered 22, that in respect of the allegations contained in paragraphs numbered 7 to 21 inclusive, and each of them, the Respondent was not duly elected and returned, and that his election and return were and are wholly null and void.

Mr. *Russell*, in opening the Petitioners' case, mentioned a number of cases of bribery before the polling-day, as to which he intimated that he intended to call evidence.

Upon evidence being tendered in proof of one of these cases of bribery—

Mr. *Hawkins*, for the Respondent, stated that he should object to a great part of the evidence which had been opened, and submitted that all the matters which were the subject of the first petition (which had been withdrawn) ought to be altogether excluded from the evidence upon this petition, which was presented under the concluding part of the Parliamentary Elections Act, 1868, s. 6, and that no evidence could be gone into in this petition, except what related to corrupt payments within 28 days before the filing of this petition, and that no corrupt practice committed previously to that time, even though it could be distinctly proved, could be introduced by way of mere prejudice, and for no other purpose.

Scope of inquiry upon a petition presented within twenty-eight days after alleged act of bribery.

Mr. Justice MELLOR stated that evidence given for the purpose of prejudice could not be admitted, but that he was of opinion that anything which threw light upon corrupt payments which were alleged to have been made within 28 days must of necessity be admitted.

Mr. *Russell* submitted that the effect of this 6th section of

the Parliamentary Elections Act, 1868, was to extend the period for presenting a petition from 21 days after the return to a period of 28 days after any corrupt payment had been made. He cited a dictum of Keogh, J., reported in 1 O'M. & H. 341, in support of his argument.

Mr. Justice MELLOR said he should not be disposed to shut out any evidence which might appear material, but that if it should turn out hereafter that the circumstances of the case required it, he would take the opinion of the Court of Common Pleas upon the point. He further stated that he desired to call attention to the report which he was required to make to the Speaker, under which any corrupt payment by either candidate was required to be stated.

Subsequently, in his judgment, he said as follows as to the nature of the petition:—

Nature of
petition pre-
sented within
twenty-eight
days of bribe
paid subse-
quent to the
election.

“ This is a petition presented, not under the ordinary law, that is to say, within the 21 days, but under a subsequent part of the 6th section of the Parliamentary Elections Act, 1868. That section prescribes that a petition shall be presented within 21 days after a return has been made to the Clerk of the Crown, unless it specifically alleges a payment of money or other reward to have been made by any member, or on his account, or with his privity, since the time of such return, in pursuance of corrupt practices, in which case a petition may be filed within 28 days of such payment. Now, that is open to two considerations, one of which is this—namely, that although it is true that a petition complaining of corrupt practices must be presented within 21 days after the return, yet if payments are subsequently made, then that the time of presenting the petition shall be brought down to within 28 days of the last payment to which reference is made in the petition. Now, there are certainly many observations to be made in favour of a construction which has been urged (I do not mean to say argued, but urged and stated) that that does have the effect for all purposes of bringing the inquiry down to the date of the 28 days, and that, notwithstanding the lapse of the 21 days, I am at liberty to go into a full inquiry with a view to considering the question of the seat as to all the corrupt practices that took place at the election. The other

inion is that, with a view to unseat the Respondent, my attention must be directed to these subsequent payments alone, and to such evidence as throws light upon the nature and character of those payments, in order to show that they were payments made in pursuance or furtherance of corrupt practices. Now, there are different opinions prevailing with regard to this matter. Some judges* think, and possibly theirs may be the better opinion, that payments of expenses, which might have been inquired into upon a petition presented within the 21 days may not be inquired into upon a petition presented within 28 days of the last payment made in pursuance of the corrupt practice. The other opinion is that it brings down the whole matter so as to constitute the petition presented within 28 days the last petition, into an original petition, upon which evidence might be taken into, as if it were the original petition. I myself rather incline to think that it must be the duty of the judge to confine the inquiry to the last payment within the 28 days, but I am bound to say that it is not the opinion I originally entertained. I have been brought over to that opinion during the present inquiry; therefore I certainly should not have acted upon it, if it had been necessary to decide the point, but I should have referred to the Court of Common Pleas to decide whether I had jurisdiction to unseat the Respondent in respect of practices which ought to have been inquired into under a petition presented within 21 days after the return of the writ."

In the course of the case—

It was proved that only a few days before the election the Respondent was suddenly invited to come down and contest the borough. He accordingly came down, and after making a variety of speeches at various places, he made a speech upon the night before the poll, in which he said, "Well, when we have won the election, we will have an entertainment together," or words to that effect. Again, on the night after the poll, just before leaving town, he said as follows: "I am going to return to London to-morrow night, but I hope soon to be down among you again, and when I am free and untrammelled by the election law, we will have a day's

Corrupt practice after conclusion of election.

* *Semble*, Lush, J. ; see note to p. 170.

enjoyment together," and on a third occasion, some time after the election, he made another speech to the electors, in which he said as follows: "One thing more. You know when I was returned for this place I promised the town that, so far as I could contribute to it, I would come down, and we would have two or three days' jollification together." In pursuance, as it appeared, of this promise, the Respondent gave orders that an estimate should be prepared for a grand *fête*, and the following estimate was submitted to and approved by him:—Five bands, £50; horses and carriages for procession, £60; six large marquees, £50; filling marquees with seats and tables, £60; 2000 dinners at 5s. a head, £500; 100 dinners at 20s. £100; 5000 teas for women and children, £300; 8000 yards of blue ribbon, to be distributed among women and children, at 3d. a yard, £100; printing and postages, £40; contingencies for retiring-rooms, fireworks, labour, &c., £270; making in all £1480. In addition to this, the Respondent agreed to distribute among the electors medals and rosettes; as to this the Respondent wrote as follows: "I think that an excellent idea, the pleasure of wearing it will get a good many friends over from the other side, and this will be the means of keeping our party together on, I hope, many occasions." As soon as the preparations for this entertainment were complete, and the contracts made for carrying it into effect, the Respondent sent down two cheques for £500 each, payable to the order of Mr. Burcher, a solicitor resident in the borough, who acted as legal agent to the Respondent, and Mr. Jefferies, an alderman of the borough, and an active supporter of the Respondent. These cheques were paid into the bank at Kidderminster, and placed to the joint account of these two gentlemen, to be used by them for the purposes of the entertainment. The cheques were sent to Mr. Jefferies, enclosed in a letter, which was not forthcoming at the trial of the petition, and was stated by Mr. Jefferies to be no longer in existence. When, however, the proceeding had advanced to this point, it was suddenly suggested (in consequence of something which had appeared in a local paper as to a similar entertainment which had been projected at Warrington) that an entertainment of this kind might have a very prejudicial effect if the Respondent should be

a candidate again at the next election. Consequently the opinion of counsel was taken, and in pursuance of the advice so given, it was determined to abandon this proposed entertainment, and to send back to the Respondent the £1000 which he had advanced. But as some considerable liability had been already incurred on account of orders which had already been given to tradesmen for things that would be required at the entertainment, it was suggested that these liabilities should be defrayed out of the £1000, and only the balance sent back. But to this course Mr. Jefferies strongly objected, and ultimately it was decided to send back the £1000 intact. Accordingly the £1000 was returned to the Respondent, but it was accompanied by a letter from Mr. Jefferies (the original letter was not forthcoming) to this effect: "Although we send you back the £1000, you must understand that the committee have entered into contracts, and they will have to make payments in respect of matters delivered, and therefore you must be so good as to send us £300." This sum the Respondent sent as requested.

Upon these facts, it was submitted by the Petitioners that the payment by the Respondent of this sum of £1000 towards the expenses of this entertainment was a corrupt payment in pursuance of the promise made by him before the election, and was a corrupt practice within the meaning of the Corrupt Practices Act.

On behalf of the Respondent it was contended, (1) that the expressions made use of by the Respondent in his speeches to the electors were mere hasty and unguarded words, and could not be treated as a deliberate promise and, (2) that even supposing he had made such a promise, the fact that the idea of the entertainment was abandoned as soon as it appeared that there was any danger of it being held to be an illegal proceeding, was sufficient to show that no corrupt act had actually been committed.

Mr. Justice MELLOR in his judgment said as to this: "I confess that if the case rested solely upon that speech which the Respondent made upon the night before the poll, I should have been very much disposed to give him the benefit of a doubt as to what was really intended by him. I might have thought, and probably should have, that although he had used these words 'Well, when

we have won the election we will have an entertainment together,' they were the mere hasty words of a person suddenly called upon to make a speech to electors. I should have given him the benefit of any doubt I might have entertained as to the effect of those expressions had it not been for what subsequently occurred. But I cannot look upon that statement in that speech as I would upon an isolated expression used in the heat of the moment, when I call to mind the words which he used on the following night. Those words are to my mind very important words, because they convey to my mind that the Respondent was only restrained by a terror of the trammels of election law from at once affording to the electors such a treat as he had promised on the previous night. Now, it was said by one of the witnesses that he believed the people did not care much about the promise and did not pay much attention to it. For my part, from what I have heard and seen, I think there are a great many electors in Kidderminster who would be influenced by such a promise, and who would regard it as the only part of the speech that was worth their listening to, and which they would be likely to be influenced by. The Respondent is a gentleman well known for his munificence and for the liberality of his gifts, and I think that the electors would be influenced by the expectation that they were to have a reward for their exertions in returning the Respondent to Parliament, and that they were to have a treat, not a mere insignificant treat, but a real treat, which would give to themselves and their families a satisfaction which they would not otherwise obtain. But that is not all: the Respondent comes down on a subsequent occasion and makes a third speech to the electors. He says 'One thing more—you know when I was returned for this place,' just observe the words, 'I promised the town that, so far as I could contribute to it, I would come down and we would have two or three days' jollification together.' That is the Respondent's own interpretation of his own promise, and I am at a loss to understand how I am to come to any other conclusion than that the promise which was made upon the two first occasions by the Respondent, coupled with what he said on the third occasion, was a promise to be hereafter performed by the gift of meat, drink and other entertainment, and that being so, it was a

corrupt promise, and was the foundation of all that subsequently took place. But the important matter was this, whilst the arrangements for this entertainment were in the act of being completed, the Respondent sends down two cheques for £500 each—for what purpose? If there is anything clear in this case it is that these two cheques were sent down for the purpose of being used on account of this entertainment, to be drawn upon for the expenses to be incurred by the committee. Well, it was not drawn upon, and why? Because the idea of the entertainment was abandoned. Then comes this question, did this abandonment operate or act retrospectively so as to get rid of all the attempts to carry it out. I think certainly it did not. I think the promise amounted to a corrupt practice. I think the carrying out of the scheme was the carrying out of a corrupt practice, and, although it was not completed, but stopped *in medio*, it is perfectly clear to me that that could not purge what had been done, that they had entered into contracts, and it was not because they got rid of some by compromise and paid others, that they could say ‘Oh, this is all moonshine, there never was any real carrying out of the promise, it was abandoned as soon as it was entered upon, and there was an end of it.’ I do not think so. At the time that the Respondent sent the £1000 down, the whole thing was alive and flourishing, and that £1000 was intended to be a payment in pursuance, and in furtherance and in performance of the promise which the Respondent had made, and had it not been for the vigour and determination of Mr. Jeffries it would have been actually used. Therefore, I come to the result that that was a corrupt promise, that it was partially carried out and stopped *in medio*, and that the £1000 which was sent in those two cheques was, strictly speaking, a sum of money paid in furtherance and in pursuance of the corrupt contract or promise which I say the Respondent had made. The Respondent, therefore, is in my opinion, so far affected by what occurred that he can no longer hold his seat.”

Mr. Justice MELLOR, in his judgment, declared the election void.

As to the costs, he said: “I shall follow the rule which I Costa.

always act upon, unless there is some special reason to depart from it, and I see none here, therefore the costs will follow my decision and be borne by the Respondent. The only exception I desire to make is one not on account of its importance but on account of its significance. I certainly desire that the expenses of bringing down the man Bailey * as a witness should not be allowed. It is of no importance as regards the amount, but I wish to testify that I disapprove altogether of the employment of persons guilty of tricks of that description for the purpose of getting evidence. I therefore make that exception, that I disallow his costs."

* This man had come down and professed to be an agent of the Respondent, and as such had endeavoured to elicit from various publicans in the town what had taken place in their houses during the election.

CASE XXVIII.
BOROUGH OF STROUD.

BEFORE MR. BARON BRAMWELL, JULY 2, 1874.

Petitioners: Marling and others.

Respondent: Mr. Dorington.

Counsel for Petitioners: Mr. Serjeant Parry ; Mr. Charles Russell, Q.C. ;
Mr. Anstie.

Agents: Messrs. Waterhouse and Winterbotham.

Counsel for Respondent: Mr. Serjeant Ballantine ; Mr. A. L. Smith.

Agents: Messrs. White and Jones.

THE petition contained the usual allegations of corrupt practices, but did not pray the seat.

It was proved that at the previous election, which took place in February, and which had been declared void on petition,* the Respondent was an unsuccessful candidate, and that at that election considerable sums were sent by agents of the Respondent to voters who were away from home, in postage stamps, ostensibly as payment of their travelling expenses, but in many cases the sums sent were far beyond the mere railway expenses. These facts being indisputable the Respondent's counsel withdrew from the defence of the seat.

Mr. Baron BRAMWELL, in his judgment, declared the election void.

* Ante, p. 107.

Agreement as to paying travelling expenses on both sides.

As to the payment of travelling expenses he said as follows: "I must say that the arrangement that was made with respect to the payment of these travelling expenses, namely, the agreement that neither party would take exception to the other doing it, was really a most disastrous arrangement to be come to. In the first place I cannot strictly call it illegal, because I do not know that in any way the parties to it could be punished. I suppose it was competent to them without illegality to say they would not object to each other doing it, but it was an arrangement for the unpunished doing of an illegal act, because it is quite certain that the payment of these travelling expenses is a thing prohibited by the Act of Parliament.* The mischief of it was not limited to the mere illegality, but it was perfectly certain that the result of it would be that sums in excess of the travelling expenses would be paid.

Costs.

Costs followed the event.

* Representation of the People Act, 1867, s. 36, as to England, 31 & 32 Vict. c. 48, s. 25, as to Scotland, and 31 & 32 Vict. c. 49, s. 12, as to Ireland.

CASE XXIX.

BOROUGH OF STROUD.

BEFORE MR. BARON BRAMWELL, JULY 7, 1874.

Petitioners : Baynes and others.

Respondent : Mr. A. J. Stanton.

Counsel for Petitioners : Mr. Serjeant Ballantine ; Mr. A. L. Smith.

Agents : Messrs. White and Jones.

Counsel for Respondent : Mr. Serjeant Parry ; Mr. Anstie.

Agents : Messrs. Waterhouse and Winterbotham.

THE petition contained the usual allegations of corrupt practices, but did not pray the seat.

The facts of the case sufficiently appear from the judgment.

MR. BARON BRAMWELL, in his judgment, declared the Respondent duly elected.

As to the facts of the case, he said as follows :—

“ This case is reduced, by the concession of the Petitioners’ counsel, to what arises from the workmen having been paid on the polling days of the elections * held in February and May. I take the facts to be clear. In the first place, this fact is clear—

Payment of wages, when bribery.

* The several elections referred to were (1), the election held in January, 1874, in consequence of the death of one of the members, Mr. Winterbotham, in December, 1873, (2) the general election, which was held in February, 1874, and (3) an election held in May, 1874, in consequence of the election in February being petitioned against and declared void.

that up to and inclusive of the day on which the January election was held, all the days on which the men did not work were days for which they were not paid. Whether it arose from the mill stopping from a break down, or from its being a holiday, such as Christmas Day, Whit Monday, or Good Friday, or from the men thinking fit to absent themselves and take holiday, on all these occasions, including the polling days, if the men did not work they did not get paid. That is one clear fact. The next fact is—that in all the mills that practice continued up to and inclusive of the January election. There is no evidence that anyone was paid at the January election except in the case I am going to mention. After the January election, and after it was known that the February election would come on, the men at Ford's mill were paid for the January polling day. Not only in Ford's mill, but at Marling's, Strachan's, and several others, they were paid for the polling day in February, and the polling day in May, but there is no mill except Ford's at which they were paid in respect of the January election. These facts are beyond dispute. The facts, therefore, are, that in Ford's mill there was the particular exception I have mentioned, but in that mill and in several others a new practice has been introduced of paying men for a day on which they did not work, that day being the polling day, when the mills were closed. It was argued that that is a bribe within the meaning of the Corrupt Practices Act, 1854, and that really is the simple question I have to decide. It is simple enough as far as the statement of facts goes, but it may involve some considerations of difficulty. Now I will read the words of the Act which bear upon the first way in which my brother Ballantine has put it to me; they are these:—'Every person who shall promise any money to any voter in order to induce any voter to vote or refrain from voting shall be guilty of bribery.' I am called upon to find that these millowners, some of whom are undoubtedly agents of the Respondent, promised money to voters in order to 'induce them to vote or refrain from voting.' It appears to me that there are two insuperable difficulties in the way of my doing so, and one of them is that I see no promise at all. We must limit ourselves to the case in May, as the Respondent was not a candidate at the February election,

and, therefore, he is not affected by anything that took place before May, except as it casts a light on the May proceedings. Now my brother Ballantine very ingeniously argued it in this way; he said that by paying the men in February the millowners in effect promised the men that they would similarly pay them upon the next occasion, that the payment in February is under the circumstances evidence of a promise that when the next election was held they would do the same thing again. That is the argument. Now if that were so, I think it would be within the statute, because, although the bribery must be committed at the election, and the promise must be at the election, yet it has been held,* and properly held, that it does not mean at the very moment when the polling is going on, but it means at such a time as makes the bribery operative on the election. To take an extreme case, if the Respondent himself had said to any voter, 'Here is £5 for you if you will promise to vote for me when I am a candidate,' if he had not come forward for the next ten years it would still have been within the Act of Parliament. Therefore, if the millowners who were agents of the Respondent in May had said in effect in February, 'If you vote upon my side in May I will pay a day's wages when you do not do a day's work,' it would have been within the Act of Parliament. But is there any evidence of such a promise as that? To my mind there is none. It is a sound rule of law and of good sense that you have no right to draw a general conclusion from a particular instance. Take, for example, the fact of a man having signed another man's name once, that is no evidence of an authority to sign it generally, but if he has signed it many times with the sanction of the person whose name has been signed, then there is evidence of a general authority. I can readily understand that if this practice had gone on for many elections, and money had been paid when the men did not work, a workman would be entitled to say, 'Why, you hired me on those terms; it was always the practice at your mill that if the mill was shut upon that day, and I did no work, nevertheless that I should be paid for it.' But one instance of the sort does not warrant any such conclusion. It was a matter of

* Per Keogh, J., Sligo, vol. i. 302.

grace in February, when it was paid, and it was equally a matter of grace dependent upon the good pleasure of the millowners at the time when they actually paid it in May. But there is another difficulty in the way, and that is this. The promise struck out by the Act of Parliament must not only be a promise of money to voters, but it must be a promise to voters, 'in order to induce any voter to vote or refrain from voting.' Is it possible to say that what was done here was done 'in order to induce any voter to vote or refrain from voting?' I think not. Very probably, however, there was in the minds of these masters who paid in this way some notion that it would not have an unfavourable effect upon the persons who received this day's wages. They must have had a notion that it would do them some good; they could not have thought that it would have a neutral effect. But the Act of Parliament does not deal with that case. The Act does not say that liberal conduct towards your men, or such a thing as I suggested—for instance, the putting up of a drinking fountain, or what not,—although it may be done very much to influence voters, is an act of bribery. I do not think that it was the intention of the Legislature to prevent the doing of any act liberal and good in itself. As, for instance, if a master said to his men, 'If you choose to make a holiday of this day you shall not lose money by it, whatever your colour, go out and take your holiday, and you shall be paid your day's wages all the same,' I doubt if there had been any antecedent promise of that kind whether it would come within the meaning of the Act. I do not think the Legislature intended to prohibit that; it intended to prohibit acts done with the specific object of influencing the mind of the individual voter to whom they had relation by the particular temptation held out to him, but it did not intend to prevent an act being done to a person, kind and good in itself, merely because it had a tendency to make that person favourable to the persons doing it.

Effect of the word "corruptly."

"But further, the Act says, 'shall *corruptly* do any such act.' Now, it would be impossible to find that it was *corruptly* done, unless there had been some previous engagement or something else to make that wrong which otherwise would be right. I rather think that word 'corruptly' would not apply to any case

where the payment was merely on account of the voting, unless there was some other reason for giving the money. For instance, such a thing as this might happen, if a man voted and got turned out of his situation and went to anybody for charity, and a man said, 'I am sorry for you, here is a sovereign,' that would not be a corrupt payment, though it might be said to have been given on account of the man having voted a particular way. Nevertheless, in almost every case where a payment is made in consequence of a voter having voted, it would be a corrupt giving unless some reason such as I have suggested could be given."

As to costs, he said as follows :—

"Although I have no doubt that what was done is not within Costs. the Act of Parliament, yet I believe that it was done to get the good will of the workmen who were affected by it, and I think it is somewhat a mischievous practice. It is a practice to be deprecated, and one which had better not be observed. It would be better, if the masters have a mind to do an act of benevolence and kindness to their workmen, to fix upon some day which is not a polling day. There is also another matter to which I wish to call attention. It was proved that five men were given free railway tickets, or that their fares were paid for them. That has not been traced to the Respondent, and, if it had been, I do not think it would have affected his seat. My brother MELLOR ruled at Bolton* that it would not, and I am of opinion that it would not. But I am also of opinion that it is a thing which the Act of Parliament† prohibits. The reason I have made these two last observations is, that I think the Respondent's friends have to a very considerable extent brought this inquiry upon themselves. I think that it is an inquiry that the Petitioners were well justified in entering into, and consequently I think that they ought not to pay the Respondent's costs, but that each party should pay his own."

* Ante, pp. 144—150.

† See p. 180, note.

CASE XXX.
BOROUGH OF ATHLONE.

BEFORE THE COURT OF COMMONS PLEAS, DUBLIN, APRIL 24, 1874.

Petitioner : Edward Sheil.

Respondent : John James Ennis.

Counsel for Petitioner : Mr. Serjeant Armstrong ; Mr. David Fitzgerald.

Counsel for Respondent : Mr. Heron, Q.C. ; Mr. McDermot.

Counsel for Returning Officer : Mr. Gerald Fitzgerald, Q.C. ; Mr. Nicholls.

THE petition was as follows :—

1. Your Petitioner is a person who claims to have a right to have been solely returned at the above election.

2. The said election was holden on the 2nd and 5th days of February, 1874, when your Petitioner and John James Ennis, Esq., were the only candidates, and the returning officer has made a return of the writ under which the said election was holden in the words and figures following, that is to say,

“ I certify that John James Ennis and Edward Sheil each obtained 140 votes, and I not being a registered elector of the Borough of Athlone had no authority to give any deciding vote. So answers

“ WALTER NUGENT, Sheriff.”

3. Your Petitioner complains of the said return, and insists that in reality he had a majority of legal votes, and that he alone ought to have been returned by the said returning officer, and that he

ought to have been declared duly elected member for the said borough of Athlone.

4. The said alleged equality of votes was arrived at by means of an erroneous decision of the said returning-officer in reference to twenty-one votes given for your Petitioner, which were rejected by the said returning officer.

5. It appeared, in the course of the counting of the votes, that certain of the voters who voted for your Petitioner, had placed their cross immediately after and opposite your Petitioner's name in the ballot-paper, and in the compartment or division of the said ballot-paper in which your Petitioner's name was printed, but not in a space outside the said compartment, and separated therefrom by a vertical line. Thirteen votes so given for your Petitioner were rejected by the said returning officer. It also appeared that certain other of the voters who had voted for your Petitioner had placed their cross immediately before and opposite your Petitioner's name on the ballot-paper; eight votes that were so given for your Petitioner were rejected by the said returning officer, and your Petitioner submits that the said votes should have been counted for him.

6. The rejection of the said thirteen and eight ballot-papers was objected to by your Petitioner's agent, who attended the counting of the votes, and his objections duly endorsed upon the said ballot-papers by the said returning officer.

7. Throughout the counting of the said votes, your Petitioner's agent insisted that the said returning officer should not reject any of the ballot-papers so marked; and after the returning officer had rejected most of the ballot-papers so marked, he said he thought he had made a mistake in doing so, and was sorry he had done so, and would reject no more ballot-papers on that ground. He thereupon proceeded with the counting, and allowed such other ballot-papers similarly marked as came up during the rest of the counting. The number he so allowed was four, of which one was marked for your Petitioner, and three for the Respondent.

8. After the counting your Petitioner's agent again called upon him to allow the said thirteen and eight votes for your Petitioner which he had rejected. The returning officer thereupon appealed to his assessor to know if he might do so, but the Respondent's

agent objected and protested against his so doing, and the sheriff's assessor thereupon advised him that having once decided against the said votes, and endorsed his rejection thereof upon the ballot-papers he could not subsequently alter his ruling in that respect. Thereupon the returning officer said that at any rate he would be uniform in rejecting them, and he thereupon sought out the said four ballot-papers which he had previously allowed and rejected them, and endorsed his rejection thereof thereupon.

9. Your Petitioner submits that the said returning officer improperly and illegally rejected the said thirteen and eight votes for your Petitioner, the ballot-papers in relation to which were marked as aforesaid, and that he ought to have allowed the same.

Wherefore your Petitioner prays that it may be determined that the said John James Ennis was not duly returned, and that your Petitioner alone ought to have been returned and declared duly elected member for the said borough of Athlone; and that the said Walter Nugent be deemed a Respondent hereto; and that he or the said John James Ennis be ordered to pay the costs of this petition and the proceedings thereon.

(Signed) EDWARD SHEIL.

Pursuant to an order of Mr. Justice LAWSON, the petition was turned into a special case in which the facts, so far as relates to the Petitioner's case, were set out as stated in the petition. The following additional facts were also stated, as follows:—

The number of ballot-papers delivered to electors in the aggregate was 315. On examination by the sheriff two ballot-papers were found not to be marked by a cross, or any mark to indicate for whom the elector intended to vote; eight were marked with a cross opposite, but on the left-hand side of the Petitioner's name, thirteen were marked with a cross opposite Petitioner's name, and on the right-hand side, but in the same column or compartment of the ballot-papers with Petitioner's name, one ballot-paper, marked for the Petitioner, had a name written on it. Eight ballot-papers were marked with a cross opposite the Respondent's name, and on the right-hand side, but in the same column or compartment as the Respondent's name. One ballot-

paper was marked with a cross opposite the Respondent's name, but on the left hand side, and two ballot-papers, marked for the Respondent, had a name written on them.

These thirty-five ballot-papers the sheriff rejected, and there then remained one hundred and forty votes for each candidate.

On the hearing of the special case, all the ballot-papers were ordered to be produced, to be inspected by the court, if necessary; as also the sheriff's report, made pursuant to rule 36 of the Ballot Act; and the court was to be at liberty to draw inferences of fact. The questions for the opinion of the court were as follows:—

- (a) Whether the sheriff was right in rejecting any, and which, of the said ballot-papers.
- (b) Whether any, and which, of the ballot-papers so rejected should have been counted for the Petitioner.
- (c) Whether any, and which, of the ballot-papers so rejected should have been counted for the Respondent.
- (d) The Petitioner, or the said John James Ennis, to be declared entitled to be returned as, and to be, member of Parliament for the said borough, according to the opinion of the court, upon the foregoing questions, or that the return made by the said returning-officer be declared a good and valid return; and the costs of said petition and proceedings thereon to be paid by each of said parties hereto, or to abide such other order in reference thereto as the court shall direct.

The Lord Chief Justice MONAHAN delivered the judgment of the court as follows:—

“As a matter of fact we entertain no doubt at all, that, under the true construction of this Act of Parliament, the votes on the right-hand side of the ballot-papers ought to have been received by the sheriff, and that means that Mr. Sheil ought to have a legal majority; and, therefore, we so record that in our opinion he ought to have been declared duly elected. With regard to the question of costs, we wish to take time to consider the matter. We don't decide the question as to the votes on the left-hand side, and we will specially state in our certificate that we don't think it necessary to consider whether the votes on the left-hand side are

good or bad, because not counting them, and merely deciding on the right-hand votes gives Mr. Sheil a majority, and, therefore, the counting of the left-hand votes would not alter the matter."

Costs.

As to costs he subsequently said:—"In this matter, which stood over to consider what should be done with the costs, the facts of the case are these. It appears that the sheriff, as far as we can see, of his own instance, without either party insisting on it, ruled that all these votes (those marked on the right-hand side) should be rejected. That being so, we are of opinion there was no misconduct by either party. We think it a misfortune, but that, under the circumstances, the proper course is that each party must pay his own costs."

CASE XXXI.

COUNTY OF MAYO.

BEFORE THE COURT OF COMMON PLEAS, DUBLIN, MAY 4, 1874.

Petitioner : Sir George C. O'Donel.

Respondents : George Eakins Browne and Thomas Tighe.

Counsel for Petitioners : Mr. Murphy, Q.C. ; Mr. M'Dermott.

Counsel for Respondents : Mr. Carleton, Q.C. ; Mr. Jordan.

Counsel for the Returning Officer : Mr. Beytagh, Q.C. ; Mr. Trench.

The petition was as follows :—

1. Your Petitioner was a candidate at the above election.
2. Your Petitioner states that the election was holden on the 6th day of February, 1874, and your Petitioner, George Eakins Browne, and Thomas Tighe were candidates at said election.
3. The time appointed by the returning officer of the said county, that is to say, the high sheriff of the said county, Joseph Pratt, Esq., for holding the said election was between the hours of 11 o'clock in the forenoon, and one o'clock in the afternoon of the said 6th day of February, and the place appointed by the said returning officer for holding the said election was the grand jury room of the county court house of Mayo, in Castlebar.
4. Your Petitioner was duly nominated in writing at the time and place so appointed for holding the said election, as a candidate to serve in Parliament for the said county.
5. The said writing, hereinafter called "the nomination paper," was subscribed by two registered electors of the said

county as proposer and seconder of your Petitioner, and by eight others, registered electors of the said county, as assenting to the nomination of your Petitioner, and the said nomination paper subscribed as aforesaid was during the time appointed for the said election, duly delivered to the said returning officer.

6. Your Petitioner was in all respects duly nominated according to the provisions of the 35 & 36 Vict. c. 33, and no objection was made to the nomination paper of your Petitioner by the said returning officer, or any other person before the expiration of the time appointed for the said election, or within one hour afterwards.

7. The said George Eakins Browne and Thomas Tighe were also duly nominated as candidates for election to serve in Parliament for the said county of Mayo, whereby the said election became a contested election within the meaning of the said statute.

8. Thereupon it became and was the duty of the said returning officer after the expiration of the said appointed time to adjourn the said election, and to appoint and give public notice of a day upon which the poll for the said election would be taken.

9. After the hour of one o'clock in the afternoon of the said 6th of February, the nomination of your Petitioner was objected to on behalf of the said George Eakins Browne and Thomas Tighe by their respective conducting agents and by notices in writing served by the said agents on behalf of the said George Eakins Browne and Thomas Tighe respectively, on the alleged grounds that your Petitioner had not appointed an expense agent in writing, and given notice to the returning officer thereof in writing, on or before the day of nomination, as by said notices will appear.

10. Before the declaration of the said returning officer next hereinafter mentioned, your Petitioner's conducting agent, by a written notice delivered to the said returning officer, demanded to have a day fixed for taking the poll at said election in pursuance of the said statute.

11. Notwithstanding the premises the said returning officer in violation of his duty in that behalf and in derogation of the rights of your Petitioner and of the electors of the said county,

and contrary to the statute, refused and denied a poll, and declared the said George Eakins Browne and the said Thomas Tighe to be elected members to serve for the said county in Parliament, and certified under his hand by indorsement on the writ of election the names of the said George Eakins Browne and Thomas Tighe as the members elected for the said county of Mayo, and returned said writ so endorsed to the clerk of the Crown and Hanaper in Ireland, without any poll having been had.

12. On the 6th day of February, 1874, the day of the nomination as aforesaid, your Petitioner duly appointed Patrick Gibbons, of Newport, in the county of Mayo, his agent for the payment of election expenses for the said election, and gave notice thereof in writing to the returning officer at 25 minutes past two o'clock, p.m., on the said 6th day of February.

Wherefore your Petitioner prays that it may be declared that the said George Eakins Browne and Thomas Tighe were not duly elected or returned, and that the said election was void, and that the said returning officer, Joseph Pratt, may be deemed a Respondent to this petition, and that the said Joseph Pratt, the said George Eakins Browne, and said Thomas Tighe, or some or one of them, may be ordered to pay the costs of this petition to your Petitioner.

(Signed)

GEORGE C. O'DONEL.

Pursuant to an order of Mr. Justice LAWSON, the petition was turned into a special case, in which the facts were set out as stated in the petition.

The questions for the opinion of the court were as follows:—

- (1). Whether upon the facts above stated the Petitioner was entitled to a poll.
- (2). Whether, if the Petitioner was so entitled, the election and return were null and void.

The court to make such order as to costs as it shall deem proper.

The learned judges said as follows:—

Mr. Justice MORRIS :—In this case none of the court, I believe (I can certainly say so for myself) have a shadow of doubt about this case, or have had such from the time we heard it raised; and for my part it appears to me almost inconceivable how such a decision could have been arrived at by any person. It appears, however, that this gentleman, the sheriff, who I presume is a country gentleman, was not assisted by an assessor; and I may add, parenthetically, that when sheriffs allow themselves to be influenced, forced, I should say, into making such ludicrous decisions as this, it ought to be a caution to them to fortify themselves with the advice and assistance of counsel. This case comes very little short of what it was opened to us by Mr. M'Dermott as an outrage upon the law of election. A party is put in nomination; the sheriff has the fullest power under the Act of Parliament of investigating his nomination paper, and seeing that he was properly nominated and seconded, and there his control ends; he has only to go on with the election. The suggestion made here is that he would be open to any remarks made in the town as to whether the candidate had committed bribery, and I think that would be a most irrelevant inquiry. Cases were cited which had no more bearing on the question before us than the case of the six carpenters* would have had; as to whether this gentleman (the Petitioner) had paid to the sheriff a sum of money for the expenses of the election, or whether it was a mere statement that he did so; in my opinion a most irrelevant and idle inquiry; for if he paid it ten times over it would have just as much to say to the case as if (to use Mr. M'Dermott's illustration) he wore a white hat, or had fur on his coat. In this case I have no doubt. The rest of the court will express their opinions individually—that the election must be declared null and void; and I can only add, that I really think such a thing could not occur in any other part of Ireland than in Mayo.

Mr. Justice KEOGH :—I am entirely of the same opinion. The case would be serious if it were not so intensely ludicrous, that it is impossible to look upon it except in a ludicrous aspect. The case before us states that all the three persons were duly nominated. Every one of the three was entitled to a poll. An objection was then made that the Petitioner had not appointed an

* 8 Coke, 146 a; S. C., 1 Smith's L. C. ed. 5, p. 128.

expense agent. That, however, had nothing to do with the duty of the sheriff in appointing a day for a poll. Even supposing it had, at twenty-five minutes past two an expense agent was duly nominated by the Petitioner. The ground was then shifted, and the agents for the Respondents said to the sheriff, "We object to your receiving a nomination of an expense agent, for the day is over;" and in five minutes afterwards, at half-past two, the sheriff, acting under the advice of counsel for the Respondents, proceeded to declare them duly elected. That is really the ludicrous part of this case; but suppose it was tolerated, there is no reason why every sheriff in Ireland should not do the same, and if so, it might happen that every member for Ireland would be returned by the sheriffs. These two gentlemen have at present as much right to be members for the county of Mayo, as any man who hears me; yet if there were a close division in the House of Commons on an important political question, they might decide who should be the Prime Minister for the next five years. I do really concur with my brother Morris, that in no other part of Ireland—I may go further, and say, in no other part of the British dominions—could such a thing have occurred as has happened in this case.

The Lord Chief Justice MONAHAN:—I am as anxious as the other members of the court to express my opinion on this case; not that I have the slightest doubt upon it. It appears that according to the Act of Parliament it is the duty of a person coming forward as a candidate to appoint an expense agent on the day of election; but the Act does not go on to say that the election is rendered void if this expense agent be not appointed. It merely says that the party who may pay money for the expenses of the election, without having an expense agent, will be guilty of a misdemeanour; but that has nothing whatever to do with the duty of the sheriff in appointing a day for a poll. Without any shadow of doubt, all these three gentlemen were duly nominated; it was the duty of the sheriff to appoint a day for a poll, and his not having done so, renders his return null and void. With respect to the costs of the petition, it appears that the agents of the Respondents insisted on the sheriff acting as he did, and they must, therefore, pay all the costs of the petition.

CASE XXXII.
BOROUGH OF GALWAY.
BEFORE MR. JUSTICE LAWSON, MAY 18, 1874.

Petitioner : Mr. Pierce Joyce.

Respondent : Mr. F. H. O'Donnell.

Counsel for Petitioner : Mr. Serjeant Armstrong ; Mr. C. O'Flaherty.

Agents : Messrs. Davis and Montford.

Counsel for Respondent : Mr. Fitzgibbon, Q.C. ; Dr. Houston.

Agent : Mr. Kavanagh.

THE petition contained the usual allegations of corrupt practices, and also an allegation, "that the Respondent personally engaged at the said election as a canvasser or agent for the management and purposes of the said election a certain person, that is to say, the Most Reverend John McEvilly, Roman Catholic Bishop of Galway, he, the Respondent, knowing that the said bishop had within seven years previous to such engagement and such election been reported guilty of a corrupt practice, that is to say of undue influence, by the report of a judge on an election petition under the Parl. El. Act., 1868, whereby the election and return of the Respondent were and are null and void."

It appeared that, previous to, and in anticipation of the polling day a system of intimidation was organized by the Respondent and his agents by threats and mob violence to unduly influence voters, and that such system was on the polling day carried out with the knowledge and consent of the Respondent. Consequently, the election was declared void.

In the course of the case,

It was proved that upon the trial of the Galway County Election petition in May, 1872, Dr. McEvilly, Bishop of Galway, was reported by Mr. Justice KEOGH as guilty of corrupt practices, and that the Respondent was aware of this fact. Shortly before the present election the Respondent called upon the bishop, and he (the bishop) then said to the respondent that his hands were tied by Mr. Justice KEOGH's report, and that he could have no hand, act, or part in the election. At the same time the bishop made no concealment from the Respondent that he entirely approved his candidature. The bishop and clergy reside together, and have a common table in the College House, and a few days after this visit of the Respondent to the bishop, the clergy met at the College House and formally adopted the Respondent as the candidate whom they would support. Immediately before this meeting the bishop, knowing what was about to take place, withdrew from the room in order not to be present at the proceeding. On March 8th another meeting was held at College House, the bishop, the clergy, and the Respondent all being present, and it was then arranged that the clergy should on the next day go out to canvass with the Respondent, which they accordingly did, and the canvass was prosecuted for some days. It was proved that this canvassing was not done by the express order of the bishop, but it was clear that he was aware and approved of what they were doing.

Engagement of
scheduled
person as
agent.

It was also proved that some weeks before this, namely, on February 16, 1874, a most libellous and malignant letter was written to Mr. Joyce, the unsuccessful candidate, by one of the clergy of the College House. The avowed object of this letter was to drive Mr. Joyce from the field, and to put an end to his candidature. This letter, before it was sent, was shown to and approved by the bishop, who in fact punctuated it, and in some passages altered its phraseology in order to give point and pungency to some of the insulting and libellous matters contained in it. It was clear that the writer of this letter, Father Dooley, was an agent of the Respondent, but it was also clear that it was without the Respondent's knowledge or authority that this letter was written and submitted to and corrected by the bishop.

Under the above circumstances taken together, it was submitted by the Petitioner's counsel that it ought to be held that the Respondent had been guilty within the meaning of the Parl. El. Act, 1868, s. 44, of personally engaging as an agent for the management of the election a person who within seven years previous to such engagement had been reported guilty of a corrupt practice, and that the Respondent's election ought therefore to be declared void.

Mr. Justice LAWSON said as to this in his judgment: "The question is whether under these circumstances the Respondent can be held to have 'personally engaged' the bishop as his 'agent for the management of his election.' There is of course no actual engagement pretended, as both parties, both the bishop and the Respondent, knew of the disability and of the consequent disqualification, and both certainly desired not to incur the penalty, but Mr. Serjeant Armstrong in his reply called upon me to infer from all the circumstances proved in this case that the bishop did, substantially and really, act as an agent for the management of the Respondent's election, and so act with the Respondent's knowledge and approval. Now what are the matters upon which I am asked to draw that conclusion?

After recapitulating the facts of the case as above stated, he continued as follows:—"I consider it would be impossible to hold that the bishop's silence or his non-prohibition of the canvassing (which had been arranged at the meeting on March 8) would make him an agent. I agree to the full that the bishop was, as Serjeant Armstrong described it, 'at the bottom' of the whole movement, that he secretly approved of all that was being done, and that if he had had the slightest wish that the canvass by the clergy should not take place it would not have taken place. And I go further than that, I say that the bishop perfectly well knew that, when his vicar-general and his other clergy appeared in the streets to canvass for the Respondent, the public would understand, and, indeed, were intended to understand, that the proceeding was sanctioned by the bishop. But I consider it to be impossible for me, in applying the 44th section of this Act of Parliament, which creates a disqualification, and is penal in its nature, to bring any person within that penalty upon mere sus-

tion. I admit that it may be contended, that if the bishop desired to act up to the spirit of the law, and not merely to obey its letter, he should have desired his clergy not to become agents for Mr. O'Donnell; but I, as a judge, cannot condemn any man for having violated the spirit of the law, unless he has also actually broken the law; and in order to do that, he must do some act to constitute him an agent for the purposes of the election. The learned serjeant, however, in his powerful reply, argued that the bishop's revising and approving of the letter to Mr. Joyce, of the 16th of February, written by his vicar-general, Mr. Dooley, was such an act; that it was written with a view to the election, and in order to deter one of the candidates from persevering in his canvass; and he insists that, that having been done by the bishop in the interests of the other candidate, that is sufficient to constitute him an agent. Now, the judges have always been careful (and I think rightly) to avoid giving an actual and precise definition of the word 'agent,' because in these election matters, if there were an exact legal definition of the term, I dare say persons would be always trying to evade it, and though they were doing improper acts, not to bring themselves within that definition. I think Mr. Justice GROVE has given an admirable definition or description of it in a late case,* in which he says, 'The candidate is responsible generally for all those who, to his knowledge, carried on the purpose of promoting his election.' The question in the matter of the writing of this letter is, whether the bishop did, to the knowledge of the candidate, 'carry on the purpose of promoting his election.'

"Now, the argument founded upon this letter is that it is an electioneering letter, written in the interest of the Respondent in order to put an end to Mr. Joyce's candidature. I agree that such was at least part of its purpose, but the difficulty I feel is that what the bishop did was done without the Respondent's knowledge or authority. There is no doubt that Father Dooley was an agent of the Respondent, but how can I hold that if a man's agent in doing a particular act for which his principal would be responsible is aided by another agent called in by himself and without the knowledge of that principal, that other person so

* Taunton, ante, p. 74.

called in thereby becomes an agent? It is further argued that the Respondent had publicly stated that he was put forward by the bishop and clergy. That certainly implies that the bishop was his supporter, as undoubtedly he was; but it does not follow from that that the bishop had therefore made himself the Respondent's agent. It may be said that I am dealing with this part of the case upon very technical grounds, and perhaps I am, but I do not, sitting here as a judge, feel justified in attaching a penal disqualification to a person, except upon clear and conclusive evidence."

Mr. Justice LAWSON, in his judgment, declared the election void, on account of intimidation by the Respondent and his agents.

As to spiritual undue influence, he said :—

Spiritual
undue in-
fluence.

"Undue influence, like other frauds of which it is only a species, must be established by evidence, and cannot be arrived at by conjecture. I need not refer to authorities to establish what in point of law constitutes undue spiritual influence. The judgments of Mr. Justice KEOGH in the Galway cases,* and that of Mr. Justice FITZGERALD in the Longford case,† leave nothing to be said as to the law of the matter."

Intimidation
general, or by
agent.

As to undue influence, he said :—"Mr. Fitzgibbon referred me to the Stafford case,‡ in which Mr. Justice BLACKBURN lays down the law with respect to the two kinds of intimidation which are to be carefully distinguished from each other. One is general intimidation not brought home to the candidate or his agents, which, although they had nothing to do with it, may defeat an election; the other kind is intimidation brought home to the candidate and his agents."

Costs.

Costs followed the event.

* Vol. i. p. 305, and ante, p. 57.

† Ante, p. 14.

‡ Vol. i. pp. 229, 234.

CASE XXXIII.

BOROUGH OF DROGHEDA.

BEFORE MR. JUSTICE BARRY, MAY 29, 1874.

Petitioners : Morton and others.

Respondents : Dr. W. H. O'Leary, and Mr. Daly, Returning Officer.

Counsel for Petitioners : Mr. Heron, Q.C. ; Mr. Fitzgibbon, Q.C. ; Mr. Nicholls.

Counsel for Respondent O'Leary : Mr. Porter, Q.C. ; Mr. Boyd ; Mr. Killeen.

Counsel for Respondent Daly : Mr. Falconer, Q.C.

THE petition contained the usual allegations of corrupt practices, and also allegations* as to the way in which the election was conducted, and prayed the seat for the unsuccessful candidate.

Evidence was given to show that there had been at the election an organised determination between those who had the conduct of the election and the Respondent or his agents to set at utter defiance the principles of secrecy sought to be enforced by the Ballot Act, and to carry on the election with the same publicity, and with the consequences attendant on that publicity, as existed before the passing of the Ballot Act ; but this was not proved. What was actually proved to have taken place appears from the Special Case.

All the charges of corrupt practices were withdrawn.

In the course of the case,

It was proved that in consequence of some unforeseen accident Consequences
of not opening

* The nature of these allegations appear from the Special Case set out below, p. 203.

the poll at the proper time.

the polling stations were not opened at the statutory hour of 8 A.M., and, in fact, no votes were (or could be) received until 8.45 A.M. It was clear that the fact of not opening the polling stations until three quarters of an hour after the appointed time had no effect whatever upon the result of the election, and that not a single voter was in consequence prevented from voting; in fact, the whole constituency was almost entirely polled out before the poll was closed.

It was argued, however, by the Petitioners' counsel that the mere fact that the poll was not opened at the statutory time was sufficient to warrant the election being declared void. In support of this argument cases were cited* where elections had been held void in consequence of the poll being closed too soon. The recent decision of Grove, J., in the Hackney † case was also cited.

Mr. Justice BARRY said as to this in his judgment: "Is the election to be declared invalid by reason of the polling stations being substantially not open until a quarter to nine o'clock? Being satisfied, as I am, that this fact had not the remotest effect upon the result of the election; being satisfied that the constituency was polled out, so to speak, in a manner, if not unusual, at least remarkable; being satisfied that no single voter was disappointed in voting, or was induced or caused to vote differently from what he otherwise would have done, by reason of this error of time, I will not declare the election invalid by reason of the irregularity that the booths were not opened, strictly speaking, at eight o'clock. I think the cases referred to by the Petitioners stand each upon a very different footing. I think that the closing of the booths an hour or two before the proper time is a very different question. At all events, it does appear to me that in all these cases the element of common sense and the reason of the thing has largely to enter into the consideration of the tribunal."

Subsequently in his final judgment he added as follows as to this matter:—"I have seen a suggestion that my decision in this case is a dissent on my part from the decision of Mr. Justice Grove in the Hackney case. I beg leave to disclaim any such dissent. There is no resemblance between the two cases. In that case the most ordinary and necessary rules of an election

* Limerick, P. & K. 373; Harwich, 1 P. R. & D. 314. † Ante, p. 81.

were violated. Of the 41,000 electors of Hackney, only about two-fifths could have voted, two of the polling places were closed all day, and three others for part of the day. In that state of things it was proposed to the learned Judge that he should enter on a sort of speculation or conjectural scrutiny, in order to ascertain how the election would have resulted if everything had been regular, and he most properly declined such an inquiry. But in the case now before me, it was not proved, it was not even suggested, that a single voter had been disappointed in voting by reason of the delay. The cases where election committees have set aside elections under similar circumstances are referred to in Bushby's "Election Manual,"* but to hold an election void under such circumstances as the present would be to put it in the power of any careless or corrupt presiding officer in any one polling station to nullify the solemn act of the largest constituency in the Kingdom."

At the close of the Petitioner's case the scrutiny was gone into, but the number of votes struck off was not sufficient to place the unsuccessful candidate in a majority.

Mr. Justice BARRY, in his judgment, stated that, as the scrutiny had failed in establishing the Petitioners' claim to the seat, he should submit a Special Case for the decision of the Court of Common Pleas, setting out the facts which had been proved.

The Special Case was as follows :—

The trial of this election petition before me was terminated yesterday, and I request the opinion of the Court of Common Pleas upon the following case.

The facts, as proved in evidence, are, for the purposes of the determination of the question upon which the opinion of the Court is requested, to be assumed to be as hereinafter stated. At the election in February last there were two candidates, Mr. Whitworth and Dr. O'Leary. Dr. O'Leary was returned by a majority of ten, the numbers being 284 and 274. There were seven polling stations, viz. the court-house, two rooms upstairs in the court-house besides, and apartments in four private houses hired for the

* Fourth Edition, p. 70.

purpose. It is with reference to the four polling stations in these private houses that the controversy mainly arises. The polling stations were on the first or drawing-room floor of the houses.

This first floor comprised two rooms, between which there was no internal communication, but in order to pass from one to the other, a person should cross a small landing upon which the doors of the two rooms stood at right angles to, and at a small distance from each other. I annex to this case four maps representing the position and measurements of the rooms and landings.

I visited and inspected these rooms myself on two occasions during the trial.

The presiding officer, with the authorised agents, sat in the front room, out of view of the back room or the landing. In the back room was placed a table with a pencil on it, upon which the voter might mark his ballot-paper. When the voter received his ballot-paper in the front room he was ordered by the presiding officer to proceed to the back room to mark his paper. The voter having done so, returned to the front room, and placed his paper in the ballot-box there. On the landing between the two rooms was stationed a policeman, who was instructed to prevent more than one voter at a time from entering either room, to prevent any one from interfering with the voter, and to preserve order; but they received no instructions as to preventing voters while crossing the landing from showing their mark on the ballot-paper, or as to how to act in case of such an occurrence. All the arrangements of, and respecting the polling stations, and for the conduct of the election generally, were made by the returning officer in perfect good faith, under the guidance of an assessor, and with the bonâ fide intention of acting according to the Ballot Act.

A habit prevailed during the election of what was termed "bringing up voters," namely, a committee man or other friend (unpaid) of the candidates, accompanied the voter up to the polling-place, sometimes left the voter at the street door, sometimes went up the stairs with him, sometimes left him as soon as he arrived up the stairs, and sometimes waited until he had voted, and then accompanied him away from the station.

This habit prevailed at all the seven stations.

The habit of accompanying the voter up stairs, and waiting until he voted, was more generally practised by Dr. O'Leary's friends than by Mr. Whitworth's.

This practice, in my opinion, had no reference to the peculiar arrangement of the four polling stations in the private houses with a view to any violation of the secrecy of the ballot, and was merely a following out of the old tally-room practice.

The result, however, of this practice, and of the aforesaid polling arrangements, was, that it frequently happened that whilst a voter in the act of voting was passing from the front to the back room, and from the back to front room, there were standing at the head of the staircase, within a few feet of the voter, at least three persons, namely, the policeman, the committee-man, or friend, who brought up the voter, and another elector, waiting for his time to vote.

To these three persons the voter, after marking his ballot-paper, might, in walking across the landing, show the mark on his ballot-paper, and there was nothing to check or prevent his doing so, unless the policeman in the exercise of his discretion thought proper to do so, by reporting the matter to the presiding officer, or by some other means.

No evidence whatever was given that on any occasion the mark on the paper was so shown to, or seen by, any of the said persons, and on the evidence I am of opinion that no mark was so shown or seen.

On one occasion a voter was brought to the station by one of Dr. O'Leary's committee-men, and having gone into the front room, came out with his ballot-paper whilst these were on the landing or stairs, viz. the policeman, the said committee-man, and a respectable gentleman, avowedly a sympathiser with Mr. Whitworth, waiting to vote. The voter, without addressing himself to any one of them in particular, asked what he was to do with the paper, the said committee-man replied, "You have to go into that room" (pointing to the back room) "and mark the paper as you have been told, or as it has been shown," referring either to the directions given in the front room by the presiding officer, or to some instructions previously given to the voters as to the mode of voting. On another occasion a voter, having come out of the

front room with his paper, asked a policeman, in the presence of a third person, how he was to put his mark on the paper, and the policeman refused to give him any information, and referred him to the person in the front room. On one or two occasions the voter was coming out of the back room without folding his paper, and the policeman, without seeing the mark, directed him to fold it.

On one of these occasions the voter passed into the front room without having folded the paper, and the policeman heard the presiding officer in the front room desire the voter to fold it; but the mark was not seen by the policeman or any one outside the front room; whether or not it was seen by any person inside, did not appear.

In the early part of the day, in one of the back rooms, the table was so placed that the voter might possibly, by pre-arrangement with a person outside on the landing, or from carelessness, stand in such a position while marking his paper as to permit such person to see the mark, but, having twice carefully inspected the locality, I think such an occurrence extremely improbable, and I am, on the evidence, of opinion that it did not occur.

On one occasion the voter, having marked his paper in the back room, left it there on the table, and was proceeding down stairs, when the policeman asked him what he had done with his paper, and the voter replied that he had left it inside in the back room, apparently under the impression that such was the proper mode of voting.

Neither the high sheriff, the sub-sheriff, the resident magistrate in charge, nor any of the policemen, took declarations of secrecy; but there was no reason whatever to believe that this circumstance led to any infringement of the secrecy of the ballot.

The resident magistrate on one occasion went into one of the polling stations (the court-house) in order to see the arrangements, not being aware that there was at the time an illiterate voter in the act of voting there.

The resident magistrate was accompanied by the high sheriff, and the sub-sheriff was also there, and all three overheard the illiterate voter recording his vote for Dr. O'Leary.

The policeman on duty in the lower part of the court-house,

although a considerable distance from the presiding officer, overheard three illiterate voters, who spoke very loud, naming the candidates for whom they voted; two voted for O'Leary, and one for Whitworth.

This last-mentioned matter is not stated or complained of in the petition to which I refer. It appeared to me that the election was conducted in accordance with the principles laid down in the body of the Ballot Act, 1872, unless the matters hereinbefore stated, or some or one of them, be infringements, or an infringement, departures, or a departure, from these principles; and it appeared to me that so far as the matters hereinbefore stated, or any of them, are or is a non-compliance with the rules contained in the first schedule of the said Act, such non-compliance did not affect the result of the election.

I request the opinion of the court whether under these circumstances the election should be declared invalid.

The special case was argued before the Court of Common Pleas,* but, as the court was equally divided in opinion, no decision was pronounced, and the case was sent back to Mr. Justice Barry, endorsed as follows:—"The special case reserved by Mr. Justice Barry stating certain questions of law for the opinion and determination of the court in this election petition matter having come on for argument to-day, on hearing counsel . . . for the Petitioner . . . and Respondent, the court being equally divided in opinion, pronounce no decision."

Mr. Justice BARRY, in his final judgment, declared the Respondent duly elected.

After recapitulating the facts as set out in the special case he said as follows:—

"Such being the result of the evidence, Mr. Fitzgibbon, for the Petitioners, contended, in his reply, that the election was void on two grounds: (1) That the adoption of a second room for the purpose of marking the ballot-papers was in itself a violation of the rules of the Ballot Act, which, he contended,

Point of law
submitted to
Court but not
decided.

* The judgment of the Court was delivered on June 5, 1874, but no report of the case has as yet appeared in the Irish Law Reports.

required all the operations of voting to take place in the one apartment; and (2) That the facilities afforded to the elector while passing from one room to the other to show his ballot-paper was a fatal departure from the principles of the Act. These points I submitted for the determination of the Court of Common Pleas, because I thought that a question of such importance on the principle and working of this new Act of Parliament ought to be decided by the highest court in the country. The result, we all know now, has been that the court was equally divided. But now remains the question, What is to be the result of this state of things? Taking the endorsement on the case which was made by order of the Court in connection with the language of at least one of the judges of the Court of Common Pleas, it seems to be taken for granted by that Court that the result of their division in opinion is to discharge them from the duty of determining the question submitted to them, and that the case reverts to me for my independent decision, as if it had never been submitted to that Court. One thing is certainly clear, that I am not in the position of a fifth judge of that Court, whose opinion would constitute him a judicial majority. But is it clear that the Court of Common Pleas was not bound to determine the case one way or another, and furnish me with that determination? Does the case revert to me for my independent decision? If it does, the result is certainly curious and unparalleled. A Supreme Court is provided for the "determination" of legal questions which may be deemed by the single judge at the trial too doubtful and important for his single decision. A question is reserved by a judge for the "determination" of this Supreme Court, and the result is that this supreme tribunal informs the judge who has invoked their judgment that the case is so doubtful and perplexing that they are divided in opinion, and can arrive at no conclusion, and that he must therefore decide the matter for himself as best he can. A more singular transmutation of judicial positions can scarcely be imagined. But is the Legislature really responsible for such an anomaly? By sect. 11 of the Parliamentary Elections Act, 1868, the judge, at the conclusion of the trial, is to certify to the House of Commons his determination; but under sect. 12 he has power, if he pleases, to 'postpone the

granting of the said certificate,' and to reserve a question of law for the Court. Now it is to be observed that this section does not, in terms at least, give the judge a power to adjourn *the trial*, in order to take the opinion of the Court upon some incidental question, and having obtained that opinion, then to resume the inquiry. His power, as expressed in terms, is to postpone that which takes place after the trial is concluded, namely, the granting of the certificate. And it thus may be well argued that the only reservation contemplated by the statute, is the reservation for the 'determination' by the Court of some question upon the determination of which the nature and effect of the judge's certificate to the Speaker must absolutely and conclusively depend. And if this be so, and if the equal division of the Court is to be regarded as no 'determination' at all, and if the difficulty be not solved as in cases of demurrer by the withdrawal of the junior judge, then the granting of the certificate being postponed until the 'determination' of the question by the Court of Common Pleas, which is never to happen, it may be contended that the ludicrous result would ensue, that the whole proceedings are indefinitely suspended, and the decision of the case postponed *sine die*. The possibility of such a contention could be avoided, and full effect given to the statute, either by the withdrawal of one judge, or by holding the effect of an equal division of the judges to be the same as the effect of a similar division, in other cases where the action of an inferior tribunal is submitted to the review of an appellate or correctional tribunal consisting of an even number of judges; which effect is that the act of the inferior tribunal is deemed to stand affirmed. For example: during the last term, a case came before the Court of Queen's Bench where, under a very useful but obscurely worded statute, one of the divisional magistrates made a conviction, but reserved, by way of case stated, the question of the legality of that conviction for the Court. The judges were equally divided, and the conviction stood affirmed. So, in a recent case, in one of the other courts, a question arising on a civil bill appeal was reserved (by way of case stated under the statute) by the appeal judge for the opinion of the Court. The judges were equally divided, and the decision of the recorder, or chairman, stood affirmed. And if, under the 11th section of this Parlia-

mentary Elections Act, the parties themselves were, under the direction of the Court, to state a special case, if the Court were equally divided, I apprehend the result would be either that the election would be declared valid, or a determination would be arrived at by the withdrawal of a judge. It is difficult to see any valid reason in substance why the same result ought not to follow, or the same course to be adopted in the present case. The fact that the question was reserved by the judge at the trial, is really only a distinction without a difference, or if it makes any difference it affords an additional reason why the Court of Common Pleas should, in some way or other, determine the question ; so that the anomaly of one judge sitting to criticise and review the conclusions of the four judges to whom he appealed for guidance would be avoided.

“ However, I do not mean to give any opinion on this subject, or to decide this case upon such considerations. I shall assume that the judges of the Court of Common Pleas have actually in point of law, and in point of fact, failed to do that which the statute contemplated, and as it would seem, required that they should do, namely, to ‘determine’ the question, ‘was this a valid election?’ I shall assume that the opinions of the judges are to be regarded as merely abstract opinions devoid of any adjudicative efficacy, and that the question to be decided, as it is said, ‘reverts’ to me. It seems to me that my course is clear and simple. The election, as I have said, was pure and free. I am bound upon the evidence to assume, and I do assume, that the election of the sitting member was the result of the choice of the electors honestly and fairly exercised, and in effect, with all the secrecy of the ballot; for in no one instance was a ballot-paper shown to or seen by an unauthorised person. In anything that has occurred, the sitting member, his agents, and his friends are wholly free from blame. He and they had no control whatever over the arrangements made by the sheriff. There was evidence in the case that his conducting agent disapproved of them. And the question for me is, am I, under these circumstances, to unseat this member, and declare this election void, for the mere act of the returning officer; an act for which the member, and his friends, and the electors are irresponsible; an act which was the result of a mere

error of judgment on the part of the returning officer ; an act by which the result of the election was in no degree affected ; an act, no doubt alleged to be illegal, but of which the illegality is so doubtful, that the judicial mind of the Court of Common Pleas, constituted as that Court is of men of conspicuous ability and experience, has, after full argument and consideration, failed to ascertain its existence.

“In a case in England,* where it was sought to avoid an election, on the ground of irregularity or illegality in the taking of the poll at one of the booths, that able and experienced judge, Baron Martin, in giving judgment, said : ‘I adhere to what Mr. Justice Willes said at Lichfield, that a judge, to upset an election, ought to be satisfied beyond all doubt that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside.’ The question raised in that case may not be precisely of the same character as the question raised here, but the rule laid down by that eminent judge seems to me to be consonant with justice and with common sense, and to be one of general application. Applying, then, that rule so laid down by Mr. Baron Martin, I decline to say that I am satisfied that this election is void, which election two judges of the Court of Common Pleas have, after argument in the full Court, declared to be valid. I therefore decide and determine that the sitting member, Dr. O’Leary, was duly elected for the borough of Drogheda, and I shall so certify to the Speaker.”

As to costs he said :—“I think it is a good general rule that Costs. the party who is successful should be indemnified as to costs by his unsuccessful adversary, or, in a case like this, by the person whose act has rendered necessary the litigation, and, in that view, I should have had to consider whether I should visit the costs of the petition on the returning officer or on the Petitioner, or on both. However, having regard to the novelty of the question here raised, to the fact that the returning officer acted *bonâ fide*, and especially to the precedent furnished to me by the Court of Common Pleas in the Athlone case,† I shall not adopt that course. In that case the petition was rendered necessary by a decision of

* Warrington, vol. i. 44.

† Ante, p. 190.

the sheriff respecting some ballot-papers, which decision was overruled by the Court ; but the Court having regard, as I understand, to the bona fides of the sheriff, and to the fact that the unsuccessful candidate was seeking to maintain the ruling in his favour of the Court below, resolved that all parties should bear their own costs. It seems to me that, having regard to the division of opinion in the Court of Common Pleas, this case is one *à fortiori* for the adoption of a similar rule, and, therefore, I declare that the parties shall abide their own costs."

CASE XXXIV.
COUNTY OF RENFREW.
BEFORE LORD ORMIDALE, APRIL 6, 1874.

Petitioners : Charles Edward Irvin and James Macgregor.

Respondent : Colonel Mure.

Counsel for Petitioners : The Solicitor-General ; Mr. Macdonald.

Agent : Mr. John Walker.

Counsel for Respondent : The Dean of Faculty ; Mr. Balfour.

Agents : Messrs. Morton, Neilson, and Smart ; Mr. James Macdonald.

Counsel for Returning Officer : Mr. Burnet.

Agent : Mr. John Galletly.

THE petition craved the Court to order the ballot-papers to be recounted, so that the correct numbers voting for each candidate may be ascertained, and that it may be determined that the Respondent was not duly elected or returned, and that Colonel Campbell was duly elected, and ought to have been returned.*

As soon as the Court was opened,

Mr. William Hector, the sheriff-clerk, was sworn, and produced the counted ballot-papers.

* A note was presented by the Respondent against this petition to the Court of Session, craving the Court to dismiss it as irrelevant, and as containing a prayer not warranted either by the Parl. El. Act, 1868, the Ballot Act, 1872, or any other statute, law, or practice. The judges, however, were unanimously of opinion that the note of objections should be refused, and that the petition should be allowed to proceed, the expenses of the application to be borne by the Petitioners.—*Times* newspaper, Mar. 13, 1874.

Eight enumerators were then sworn, and proceeded to separate and count the ballot-papers.

After the counting was concluded,

Lord ORMIDALE said, " The enumerators have handed to me twenty-two ballot-papers which are not marked in strict conformity with the form which is given in the statute ; eight of these are for the Respondent, and fourteen for Colonel Campbell, the unsuccessful candidate. The admission or rejection of these, however, does not affect the result. Throwing them aside there is a majority of ninety-seven for the Respondent. If, on the other hand, they are counted there is still a majority of ninety-one. In that state of matters I presume that no question will be raised as to these papers.

The Solicitor-General.—No, my Lord ; I raise no question.

Lord ORMIDALE.—Then counting them all, there are 1,990 for Colonel Mure, and 1,899 for Colonel Campbell, making a majority of ninety-one for Colonel Mure. I have, therefore, to declare that Colonel Mure has been duly elected and returned, and I shall certify that to the Speaker.

Costs.

Costs followed the event.

CASE XXXV.
DISTRICT BURGH OF WIGTOWN.

BEFORE LORD ORMDALE, APRIL 6, 1874.

Petitioners: Andrew Haswell and Robert Jamieson.

Respondent: Mr. Mark John Stewart.

Counsel for Petitioners: The Dean of Faculty ; Mr. Balfour.

Agents: Messrs. Gibson-Craig, Dalziel, and Brodies.

Counsel for Respondent: The Solicitor-General ; Mr. Macdonald.

Agents: Messrs. Tody, Murray, and Jamieson.

THE petition, after stating that the returning officer had returned the Respondent as being duly elected by a majority of two votes, the numbers reported by the returning officer being 522 for the Respondent and 520 for the unsuccessful candidate, the Right Hon. George Young, alleged that the return of the Respondent was undue and erroneous and that “ the said number of 522 votes reported by the returning officer as given for the Respondent was arrived at by counting as good votes a large number of votes which ought not to have been counted, but ought to have been rejected as not being in terms of the Ballot Act, 1872, by reason

- (1). Of the ballot-papers so counted not being marked in accordance with the provisions of the Ballot Act, 1872.
- (2). Of their containing writings or marks by which the votes could be identified.
- (3). Of their being unmarked or void from uncertainty.”

And the petition further alleged that the said Right Hon. George Young had since the date of the said election been appointed and had taken his seat as one of the Lords of the Session.

And the petition prayed that it might be determined “that the Respondent was not duly elected on return, and that his election and return were and are wholly null and void, but that the said Right Hon. George Young was duly elected, and ought to have been returned as member of Parliament for the said Wigtown district of burghs, and that the place of member of Parliament for the said Wigtown district of burghs is now vacant; or to do otherwise in the premises as to your lordships shall seem proper.”

As to this petition the Respondent sent to the Lord President of the second division of the Court of Session a “note,” denying the allegations in the petition.

After the proceedings had been opened

The Dean of Faculty for the Petitioner objected to the ballot papers numbered 701, 1,307, on the ground that they did not bear the official mark as required by the Ballot Act, s. 2.

Rejection of
ballot papers
from want of
official mark.*

LORD ORMIDALE:—It has not been said by the Solicitor-General on behalf of the Respondent that papers 701 and 1,307 bear any indication by mark or otherwise of a stamp having touched them, and upon examining them I cannot find that there is any mark upon them. I therefore have no alternative but to hold that they ought not to have been counted, and that they must now be rejected. I apprehend that there must have been an omission in the hurry of the proceedings to apply the official mark. No doubt this is a hardship upon the voter in one sense, but in the “directions as to voting” which was put up in conspicuous places at the polling booths reference is made to the official mark, and the voter has a particular duty to perform in reference to it, that is to say, he must fold up the ballot-paper so as to show the official mark on the back. Therefore his attention is directed to that matter, and it is his own fault if he does not see that the mark is upon his voting paper.

Rejection of
ballot-paper
which has any-

Mr. *Macdonald*, for the Respondent, objected to ballot-paper 911 on the ground that it bore the name A. C. Allan, clothier,

* As to this, see *Pickering v. James*, L. R. 8 C. P. 489.

and thus afforded means of identification. It appeared that the voter numbered 911 on the register was not named A. C. Allan. thing written on it.

Lord ORMIDALE said as to this: "The construction which I am disposed to put on the statute* is that this name which has been written on the ballot-paper might lead to the identification of the voter. It is quite clear that the statute does not contemplate that there should be an investigation at the time, or that the presiding officer was bound to inquire or to know anything about the name. It should have been enough for him that there was a name put on the voting paper which might lead to the identification of the voter afterwards. Therefore I must sustain this objection.

The *Dean of Faculty* objected to ballot-paper 596, on the ground that it had a mark at the side of the cross, and 172 on the ground that the cross was made in a peculiar manner: he submitted that in both these cases the voters might be identified. Objection to ballot-papers on the ground of capability of identification.

Lord ORMIDALE:—I think it would be too critical to hold that what is objected to in these cases was a concerted or a designed proceeding for the purpose of identification afterwards. I therefore hold that these two papers are good voting papers for the Respondent.

Objections were also taken both on the part of the Petitioner and the Respondent to a number of other votes, and with regard to eleven of the ballot-papers objected to by the Petitioner and eight objected to by the Respondent a special case was drawn up and submitted to the second division of the Court of Session.

This special case, after stating the grounds of the petition and the result of the trial, went on as follows:—

VIII. The following are shortly the grounds upon which the said eleven objections for the Petitioners are rested:—

(1)†. The ballot-papers Nos. 64 and 1,146 are objected to as not marked with a cross in terms of the Ballot Act,

* Ballot Act, 1872, Sch. 2. *Form of directions for guidance of voters* enacts that, "if the voter places any mark upon the paper by which he may be afterwards identified his ballot-paper will be void, and will not be counted."

† This objection was not sustained.

1872, and relative schedules, and as containing marks whereby the voters could be identified.

- (2).* No. 57 is objected to, because, instead of being marked with a single cross to the right of the candidate's name, it is marked with two crosses, neither being in the proper place, but one diagonally before the name to the right and the other diagonally below the name to the left, and is so marked that the voter could be identified.
- (3).* No. 634 is objected to, as not being marked with a cross at all, but with a single stroke, whereby the voter could be identified.
- (4).† No. 143 is objected to because not marked with a cross at the right hand of the candidate's name and outwith the space for the candidate's name, and void from uncertainty, but with a cross above the name, and as being so marked that the voter could be identified.
- (5).‡ No. 61 is objected to because not marked with a cross on the right of the candidate's name, and because the only mark on the paper is a mark, not a cross, to the left of and outwith the space for the candidate's name, whereby the voter could be identified.
- (6).† No. 402 is objected to because not marked with a cross on the right of the candidate's name, but with a cross below the name whereby the voter could be identified.
- (7).* Nos. 1,039 and 277 are objected to because not marked with a cross on the right of the candidate's name, but only with crosses or marks on the left of the name, whereby the voter could be identified. And,
- (8).† Nos. 840 and 922 are objected to because not marked with the materials provided by the returning officer, viz., black lead pencils, but with ink, whereby the votes could be identified.

IX. The following are shortly the grounds upon which the eight objections stated for the Respondent are maintained :—

* This objection was sustained by the majority of the Court.

† This objection was not sustained.

‡ This objection was unanimously sustained.

- (1).* The ballot-papers Nos. 35, 37, and 1,160 are objected to as not marked with a cross in terms of the Ballot Act, 1872, and relative schedules, and as containing marks whereby the voters could be identified.
- (2).† No. 468 is objected to, because, instead of being marked with a cross to the right of the candidate's name, it is marked (1) with a cross containing marks whereby the voter could be identified; (2) the cross is not placed in the proper place, but above and over the candidate's name; (3) there are two parallel strokes drawn on the back of the voting paper in the corresponding place to the left of and over the candidate's name, as the cross to the right, whereby the voter could be identified.
- (3).‡ No. 648 is objected to as being marked with an angular stroke opposite the cross to the right of the candidate's name, whereby the voter could be identified.
- (4).‡ No. 460 is objected to because not marked with a cross to the right of the candidate's name, and because there is a cross to the left of and under the candidate's name, whereby the voter could be identified.
- (5).* No. 556 is objected to because it is not a ballot-paper as issued by the presiding officers, and even if it is a ballot-paper, it is mutilated so that the voter could be identified.
- (6).* No. 814 is objected to because not marked with the materials provided by the returning officer, viz. black-lead pencils, but with ink, whereby the voter could be identified.

The question of law for the determination of the Court was,

Whether the above-mentioned ballot-papers to which objections have been stated, or any, and if any, which of them, are, in respect of said objections, invalid, and ought not to have been counted.

* This objection was not sustained.

† This objection was unanimously sustained.

‡ This objection was sustained by the majority of the Court.

In reply to these questions the following judgments were delivered :—

LORD NEAVES.] The questions here raised are important and delicate on this account in particular, namely, that while a certain form of exercising the franchise is pointed out in the statute on the subject, some deviations from the strict letter of the directions therein contained may be so trifling as to be immaterial, while others may be more serious, and thus may be fatal. The merits of each vote, therefore, may turn on questions of degree, which it is always difficult to distinguish, as the one class may run almost imperceptibly into the other. This is the old puzzle as to how many grains of corn make a heap, or at what stage a little thing grows into a big one.

In this state of matters the important point is to look to the great objects and principles of the statute, and to take care that we do everything necessary to follow these out, and nothing that can defeat or endanger them.

The great object in view, I take it, in the Ballot Act is the double result of facility in the exercise of the franchise and perfect secrecy as to the vote of individual voters. This double purpose is by the Act sought to be accomplished by not allowing a vote to be given *virâ voce*, as it used to be, nor in writing (properly speaking), in either of which cases secrecy would be impossible, or would be imperilled, for by writing, though not setting forth the writer's name, yet through the *comparatio literarum* the writer might be discovered. Nor would it have done, perhaps, to leave the voter to put any mark he pleased to show the candidate for whom he voted. A mark has been pointed out and represented in the statutory directions, that of a cross, thus \times . It is, I think, a mark well devised for the purpose, easy of execution by men of the most moderate intelligence, and at the same time perfectly neutral in its character, so as to be practically incapable of betraying its authorship by its appearance. I think it is scarcely possible that a ballot-paper strictly in terms of the statute should lead to the voter's identification, one man's cross being in general undistinguishable from another man's.

In these circumstances, I think it essential to a good vote that the voter should make the cross thus pointed out, and that any

mark materially different would be a deviation from what is prescribed, and a failure to fulfil the requirements of the statute. For anyone to put, instead of a cross, a circle or an oval, or any other geometrical or anomalous figure, would not be a compliance with the law, independently of the consideration that such a plain and wilful departure from what was intended would suggest strongly the suspicion that some sinister purpose was intended.

In one of the votes before us, being, I think, No. 634, there is no cross, or attempt at a cross, but merely an oblique straight line. I think that the voter who made this mark has not exercised his franchise under the Ballot Act, and that his ballot paper ought not to have been counted.

On the other hand, there are ballot-papers in which a cross is made, or attempted to be made, but is not very well made; whether from unsteadiness of hand, or accidental disturbance, the cross lines are not clear or steady, but somewhat shaky and irregular. I am of opinion that such imperfections and defects are not fatal, and that it would be harsh and unjust to disfranchise a voter for such appearances. Neither am I inclined to punish with disfranchisement one voter here who has made a very respectable cross, but who has thought that it might not be the worse for small feet or claws to support it, and make it like a printed capital X. That seems to me an innocent idea, and at any rate not a sufficiently serious or suspicious addition to make his vote bad. I don't know whether this voter may not have been reading Johnson's Dictionary, and referring to a word which he is very fond of using, the word "decussate," which he explains as meaning "to intersect at an acute angle," and he quotes some passages which show that decussating is used by lines having the form of the letter X decussating one another longways. Now this voter has decussated these lines, and in doing so has made very small feet or resting places for them. I would not advise that system to be carried too far; but where it is done as appears here, I would not hold that it operates a disfranchisement of the voter.

On the other hand, where there has been put on the ballot-paper a substantial and separate addition to the voter's mark,

this seems to me to be a good objection, and to be struck at expressly or virtually by one of the clauses of the 2nd section of the Ballot Act, Part I., by which any ballot-paper is declared void on which anything but the number on the back is written or marked by which the voter can be identified. This clause is one which is not perhaps expressed with the precision that would have been desirable, for it is not exactly clear upon the face of it what is meant by the nullity or vice here indicated. But I think that under this enactment any plain and palpable addition on the ballot-paper unconnected with the actual mark of the vote is a fatal objection. We have among these ballot-papers one which has a black line drawn on the back, and others on which there is a plurality of crosses on the front, and it is undoubtedly a nice and important question whether these unnecessary things are merely superfluous and innocent, or whether they fall under the category of being marks by which the voter can be identified.

I think that this declaration of nullity does not require that there should be absolute proof of a design or intention on the part of the voter to be identified. That is not said, and is not to be expected; and considering the secrecy of the proceedings, it cannot be supposed that either the returning officer or the election judge should be able to say what was the intention of the party in thus adding to the statutory expression of his vote. But it is plain that such additional marks may be used as a means of communicating information such as might lead to identification, and where they are plainly done, not by mere carelessness or want of skill, we are naturally led to ask, why are they there at all, except for some sinister purpose? If we allow any superfluous additions of this kind, we may be obliged to pass them over, however numerous they may be, and thus a door would be open to evasion of the essentials of the Act. If a voter puts the cross strictly in terms of the statute, there is scarcely a possibility of identification from the ballot-papers; but if a voter, besides his proper cross, puts one or more additional crosses, or puts circles or ovals *ad libitum*, he raises a strong suspicion against himself, and has himself to blame if his ballot-paper is rejected.

All such superfluities are the less excusable as the Act pro-

vides for having a new ballot-paper if one has been spoiled or rendered unfit or unsuitable for the purpose in the course of voting.

With regard to the position of the cross, it is directed to be put on the right-hand side, opposite the name of the candidate. I think some latitude must be allowed on this subject, and that if the mark is opposite the candidate's name, and towards the right-hand side, the paper should be sustained, but not if it is decidedly at the left-hand side, which seems a gross as well as a suspicious deviation from the statute.

I think that it is not essential that the cross should be made with pencil. The directions, indeed, contain this paragraph, p. 120 of the book we have in our hands, that the voter will take the pencil in the compartment and mark his vote; but this is not a substantive enactment, and is not expressed in imperative words. The 25th section in the body of the Act, Part I., says merely that he shall put his mark, and the 20th section speaks of materials to be provided. The use of the "pencil" provided in the directions cannot be enforced. It would be impossible to inquire whether a pencil mark was made by the pencil of the presiding officer or by the pencil of the voter, and therefore it seems impossible to object to that. A good cross with any pencil, or with any ink not peculiar, seems unobjectionable, and not contrary to any purpose contemplated by the Act.

Besides, it is impossible to say whether the ink used here may not have been used by the presiding officer under some of the clauses of the statute which permit his interference.

Upon these principles, I have formed my opinion that certain of the votes here objected to should be sustained, and that to others the objections should be sustained, and the votes disallowed. It will be the duty of the election judge to follow out the findings which we may pronounce, and to apply them to the numerical question on which the result of the election depends.

Lord ORMIDALE.] I think it right to explain that while I disposed of various points relating to the validity of ballot-papers, which were discussed before me as election judge in this petition, I considered it desirable to reserve for the determination of the

Court the objections referred to in the Special Case now before us. I was induced to do so as well by the difficult and perplexing nature, in some respects, of these objections as by the obvious desirability of having, as far as practicable, some rules or principles established by the more authoritative judgment of the Court than that of a single judge, for the guidance of parties who may be concerned in future elections. This appeared to me to be all the more desirable as there is reason to believe that the opinions entertained and given effect to by the presiding and returning officers in the recent elections throughout the country were far from uniform.

The particular sections of the Ballot Act, upon the true construction of which the questions now to be determined chiefly depend, are referred to in the Special Case.

The great object of the Act appears to be to prescribe such a mode of procedure as, while it would enable the electors to give their votes in a ready and simple form, will at the same time ensure that this is done with as much secrecy as is attainable in such a matter. Accordingly, in the second schedule to the Act, there is what is called "Form of Directions for the guidance of the voter in voting," and among other things it is there prescribed that "the voter will go into one of the compartments" (at the polling place) "and with the pencil provided in the compartment place a cross on the right-hand side opposite the name of the candidate for whom he votes, thus x." And in the same schedule it is declared that, if the voter places any mark on the paper by which "he may be afterwards identified, his ballot-paper will be void, and will not be counted." Although these statutory provisions are in one of the schedules to the Act, and not in the body of the Act itself, and are under the title, "Form of Directions for the guidance of the voter in voting," it must be kept in view that by section 28 it is enacted that the schedules and directions therein "shall be construed and have effect as part of this Act." Not only so, but to denote the imperative nature of the prohibition against the placing by a voter on a ballot-paper anything by which he may be identified, it is by the 2nd section of the Act itself expressly enacted that any ballot-paper "on which anything except the said number on its back"

(the number previously mentioned in the same section) "is written or marked by which the voter can be identified shall be void, and not counted."

What, then, are the objections to ballot-papers now to be determined by the Court, and are they, or any of them, of a nature which must be held to be fatal to the votes? They are generally to the effect that the ballot-papers contain marks or writings which are not only prohibited by the Act, but are of such a description that the voter may or can be thereby identified.

Now, while it would be desirable that some precise and well-defined rules were established for the determination of all such questions, in their various specialities and modifications, I do not see how this can be adequately done by the Court. I do not, for myself, see that I can do more in this direction than to state that, while on the one hand there must be a reasonable and substantial compliance with the provisions of the Act, on the other hand trivial or unimportant deviations, such as might not unfairly be held to be incidental to the performance of the piece of work in question by different individuals of different ages, habits, and conditions, ought to be disregarded, provided that the true object and intention of the voter is free from serious doubt, and that there is not sufficient ground for holding in a fair and reasonable sense that there is any mark or writing on the ballot-paper whereby the voter can be identified. There is one thing, however, as to which I am clear, viz. that in order to show that any writing or mark on a ballot-paper, unauthorised by the statute, is of a description whereby the voter can be identified, it is not necessary that an inquiry should first be gone into for establishing the identification, or for the purpose of showing that the voter had by previous concert with others intended to make it known for whom he voted. Not only does the statute not provide for or make any allusion to such an inquiry, but it is plain, I think, from the only interpretation that can be given to its provisions, that it is enough that the mark, if any, other than the authorised one appearing on a ballot-paper is of a description whereby the voter might be identified.

Having regard, then, to these general considerations, it

appears to me, after giving all due effect to the argument which was addressed to the Court, and after a personal examination of the ballot-papers in dispute, that two crosses, neither of them being in the proper place, or a cross or crosses, or other mark or marks on the ballot-paper to the left of the candidate's name, or, in addition to a cross, a separate distinct stroke on the ballot-paper to the right of the candidate's name, or, instead of any cross at all, a mere stroke on the ballot-paper, or two parallel strokes on the back of the ballot-paper, besides a cross in the front, cannot, in any reasonable sense, be held to be trivial or unimportant deviations from the statutory directions, but, on the contrary, must be held, not only to amount to a substantial failure to comply with the statutory directions, but also to be marks or writings of a description whereby the voter may or can be identified. And if so, it follows that the 13th section, or what may be called the saving clause of the Act, is inapplicable; and, indeed, I did not understand that that clause was contended to be, in the circumstances of the present case, of any material importance.

In the views which have now been stated by me, and which I believe are in unison with those which have been expressed by Lord Neaves, the ballot-papers Nos. 57, 634, 61, 1,039, and 277, objected to by the Petitioners, Messrs. Haswell and Jamieson, and the voting papers Nos. 468, 643, and 460, objected to on the part of the Respondent, Mr. Stewart, are invalid.

On the other hand, I am of opinion, although not without difficulty as regards some of them, that the objections taken to all the other ballot-papers on either side cannot be held to amount to such a departure from the requirements of the statute as to invalidate the votes. And in reference to the ballot-papers Nos. 840 and 922, objected to by the Petitioners on the ground that ink and not a pencil was used by the voter, and the voting-paper No. 814, objected to by the Respondent, on the same ground, I may explain that I do not see how these objections can be sustained, because the use of a pencil is not positively and directly enjoined by the statute, although some reason for holding it to be implied is afforded by the phraseology used in part of the first schedule to the Act, and also because the only positive and

direct enactment on the subject is that in section 20, to the effect merely that "the returning officer shall provide each polling station with materials for the voters to mark the voting papers;" but what materials, whether pencils or pens and ink, are not specified. Besides, even if it were to be held that, having regard to what is said in the directions in the second schedule to the Act as to a pencil, the using of ink is not allowable, and might afford means for identification, it would be necessary, I think, for a party taking such an objection to support it by proof to the effect that the ballot-papers referred to were not marked by the presiding officer for voters who were unable to do so for themselves, in terms of the 25th section of the Act, which neither expressly nor by implication makes it requisite that in such cases a pencil and not ink must be used by the presiding officer.

The result is that, for the reasons I have now stated, the questions submitted for the determination of the Court in the Special Case ought to be answered as follows:—

I. That of the eleven ballot-papers referred to in the first question to which objections have been stated for the Petitioners, Nos. 57, 634, 61, 1,039, and 277, are, in respect of said objections, invalid, and ought not to have been counted; and

II. That of the eight ballot-papers referred to in the second question, to which objections have been stated for Mr. Stewart, Nos. 468, 643, and 460, are, in respect of said objections, invalid, and ought not to have been counted.

Lord BENHOLME.] As my two brethren are agreed in regard to the disposal of the objections to the votes now before us, my opinion becomes of little consequence; but I confess I think they have gone too far in sustaining the objections. It appears to me that two of the votes are clearly objectionable. One of these falls under that part of the Act which enacts that any ballot-paper "on which anything except the said number on the back is written or marked, by which the voter can be identified, shall be void and not counted." Now, any mark on the back of a voting paper (by which it is patent to all and sundry) seems to me to be marked out as censurable, and as fatal to a very different extent from marks within the voting paper (and consequently concealed),

that may be extraneous to the proper function of the voter. It is declared that any mark upon the back is to be fatal. Thus, therefore, I think we all agree that No. 468, which has two parallel strokes drawn on the back of the paper, cannot be sustained under the express words of the statute. That is a mark obvious to everybody, because the outside of the ballot-paper is not concealed at all. That, I understand, is the only voting paper bearing any mark on the outside, except one with which we have nothing to do, but which the judge disallowed at the trial, there being a name written upon it.

With regard, however, to superfluous marks made on the inside in adhibiting the cross to the name of the candidate for whom the elector gives his vote, I think these stand in a different category. I quite agree with my brethren that in one case, where there is no cross at all, but merely a line, the voter has completely failed to declare his choice. But on the other hand, where a cross has been made, and where that cross is so placed as to leave no doubt for which candidate the voter intended to vote, I am not able to agree with the principles upon which my brethren have determined to reject several such voting papers. In the first place, I think it is not fatal that the cross is put on the left hand, or above, or immediately below, provided it is so placed as to leave no doubt as to the candidate for whom the vote was intended. Further, where a proper cross has been made, designating the intention of the voter to vote for a particular candidate, and leaving no doubt as to what candidate he intended to vote for, I am not prepared to say that the addition of a score or a double leg to the cross, which may have been the result of awkwardness or accident, or of not exactly seeing how he was to commence the cross, ought to be visited upon the voter by nullifying his vote.

I think it is very difficult to draw a line (on the principles adopted by my brethren) between such additions to the cross as shall be fatal and such additions as shall not be fatal. It appears to me that what we ought to look to is this, whether the deviations from or additions to what the statute requires can be held to accomplish the desire of the voter to let his choice be ascertained, independently of a previous concert of a censurable

kind with the candidate. I consider that the smallest tick, such as might escape the eye of even a vigilant officer, might be and most likely would be agreed upon between the candidate and the supposed corrupt voter, in order to satisfy the former that the latter had performed his promise to vote for him. A prominent, a decided mark would be avoided. But whether it is a score, or whether it is a kind of double leg to the cross, or two crosses instead of one, it does not appear to me that one can lay down any distinct rule except this, that it must be something that indicates, in its own nature, an improper agreement with the candidate. As an illustration of what I think the danger of ruling that any additional score, or cross, or double line shall be held to be fatal to the vote, I may refer to the fact that precisely the same additions have been made by voters on both sides; and certainly I think it is beyond all ordinary chance that the two candidates should have accidentally agreed upon the same marks to indicate the votes given for them by electors.

As to the place of the mark, I think the important matter in reference to the validity of the paper is that the cross shall be so placed as to ascertain the candidate for whom the voter intends to give his vote; that it shall be so near the name of that candidate as to show the intention of the voter; whether it is on the left hand or the right hand, or a little above, or a little below, I don't think that such circumstances are of any importance. Further, I don't think that a distinct score, which may have been merely the commencement of making a cross, is more suspicious than a small mark not assuming the proportions of a line, but something that by reason of previous concert will equally serve the corrupt purpose of the voter. While, therefore, I have no hesitation in rejecting the two papers, on one of which there is a mark on the outside, and on the other of which there is in the inside no cross at all, I am not prepared to reject any of the others.

The judgment of the Court was then read as follows:—

Edinburgh, 23rd May, 1874.

THE Lords of the Second Division (Lord Moncrieff absent), having considered the Special Case, and heard Counsel for the

parties, are of opinion, and find in answer to the first question, that of the 11 ballot-papers therein mentioned to which objections have been stated for the Petitioners, Nos. 57, 634, 61, 1,039, and 277, but not any of the others, are in respect of said objections invalid, and ought not to have been counted; and find, in answer to the second question, that of the eight ballot-papers therein mentioned to which objections have been stated for Mr. Stewart, Nos. 468, 643, and 460, but not any of the others, are in respect of said objections invalid, and ought not to have been counted.

(Signed) *H. J. Robertson, J. P. D.*

On a subsequent day,

Lord ORMIDALE delivered judgment, and, after stating that the state of the votes at the time the Special Case was ordered left a majority of one in favour of the Respondent, and that five objections, on the part of the Petitioner, as against three on the part of the Respondent, had been sustained by the Court, declared that the Respondent was not duly elected; adding a special report, stating that Mr. Young, being now one of the judges of the Court of Session, the seat was not now claimed for him.

Costs.

The DEAN of FACULTY, for the Petitioner, then moved for the costs of the Petition, including the costs of the Special Case.

The SOLICITOR-GENERAL opposed the motion, and cited the *Athlone* case.*

Lord ORMIDALE.—The general rule undoubtedly is that the successful party gets his expenses, but there is as little doubt that in many cases the Court does not give costs to the successful party, even although it cannot be said against him that he has been guilty of misconduct in carrying on the litigation. In reality the question of costs is held to be in the discretion of the Court. Here it is not suggested that there was any misconduct on either side, either at the election or in the litigation under the present petition. It must be assumed that the returning officer, in dealing with the voting papers, acted *proprio motu*, without any suggestion on the part of the Respondent, and if so, the principle

* *Ante*, p. 190.

on which the Court proceeded in the Athlone case,* to which I have been referred, comes to be of importance. The principle there acted upon was that, as there was no misconduct by either party, each party should bear their own costs. Now that principle arises here exactly, and is equally applicable. It does not appear that the errors in the ballot-papers were caused or suggested by the Respondent. It is, no doubt, a misfortune that these errors should have arisen, and that in consequence the parties should have been subjected to, it may be, a good deal of expense, but, having regard to the principle which I think must recommend itself to any Court exercising its discretion in the matter of costs, I do not think I can do otherwise than follow the Athlone case as an example, though not a binding rule. I therefore hold that in this case each party must bear his own costs.

* Ante, p. 190.

CASE XXXVI.
DISTRICT BURGH OF WIGTOWN.
BEFORE LORD NEAVES, AUG. 6, 1874.

Petitioner : Mr. Augustus Smith.

Respondent : Mr. Mark John Stewart.

Counsel for Petitioner : Mr. Balfour.

Agents : Messrs. Gibson-Craig, Dalziel, and Brodies.

Counsel for Respondent : The Solicitor-General ; Mr. Macdonald.

Agents : Messrs. Todds, Murray, and Jamieson.

THE petition prayed the seat on a scrutiny for the Petitioner.

The result of the scrutiny was to leave the Respondent with a majority of two votes.

In the course of the case,

Ballot-paper
how to be
marked.

Mr. Balfour, for the Petitioner, objected to several ballot-papers, on the ground that the cross, although put on the right-hand side of the candidate's name, was not put in the precise place required by the Ballot Act.*

LORD NEAVES.—I do not think this is a good objection. The first question is whether there has been a deviation from the statute. Now I cannot see that any definite amount of space

* The Act directs that "the voter . . . shall place a cross on the right-hand side opposite the name of each candidate for whom he votes." See Sch. 2. *Form of directions for the guidance of the voter in voting.*

with reference to the name is an absolute essentiality in the ballot-paper. The other question is whether the mark is such as to suggest the possibility of fraud. I do not think that the objection on either ground is good, and therefore I think the papers were properly counted.

Upon certain ballot-papers being objected to as containing either marks separate from the cross, or badly formed crosses,

Lord NEAVES said, "There are matters that run into each other so much that it is impossible to lay down any clear and broad principle, and I think I must follow the maxim, '*De minimis non curat Prætor.*' I am not disposed to disqualify a voter for a trifling thing such as a spot or a dot on his voting-paper. No. 1,089 has the appearance of a speck or dot; but I shall hold it to be a good vote. Nor is mere clumsiness sufficient to disqualify. Further, there may be vacillation to a certain extent in the hand, and the voter may go back on one leg of his cross to make it more complete, and so to give it the appearance of a double stroke; but I cannot disqualify on that ground unless I see so much deviation from what an ordinary and rather rough writer would be able to do. No. 534 has a thick and clumsy line; but it appears to me to be nothing more than a blunder in the mode of forming the cross. But Nos. 550 and 430 I disallow; I think it is too uncertain what the intention of the voters was, to sustain either."

Mere clumsiness not a sufficient ground for rejecting ballot-paper.

At the close of the inquiry,

Costa.

The Solicitor-General moved for the Petitioner to pay the Respondent's expenses.

Mr. Balfour opposed the motion.

Lord NEAVES.—"This is a matter of discretion; but, on the whole, I think the correct course is to give expenses to the party who was in possession of the return, and who has maintained his

... ..

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